

[ORAL ARGUMENT SCHEDULED FOR SEPTEMBER 16, 2024]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TIKTOK INC. and BYTEDANCE LTD.,

Petitioners,

v.

MERRICK B. GARLAND, in his official
capacity as Attorney General of the
United States,

Respondent.

No. 24-1113 (consol.
with Nos. 24-1130,
24-1183)

**NOTICE OF FILING CLASSIFIED TRANSCRIPT *EX PARTE* AND
FILING AMENDED REDACTED TRANSCRIPT**

The government hereby provides notice of the *ex parte* filing of a classified transcript of a House Energy and Commerce Committee hearing related to the statute at issue in these petitions for review for the Court's *in camera* review, as well as the filing of an amended unclassified, redacted version of that transcript.

As the government previously explained, *see* Am. Notice Regarding Hearing Tr. (July 30, 2024); Notice of Filing Redacted Tr. (Aug. 8, 2024), Congress conducted a number of classified sessions, including one classified committee hearing, in connection with its consideration of the Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, div. H, 138

Stat. 955 (2024). The government filed a redacted, unclassified version of a transcript of that committee hearing with the Court on August 8, 2024, reflecting intelligence community officials' preliminary review of the transcript for unclassified information that could be publicly disclosed. The government also previously indicated an intention to file classified portions of the transcript with the Court *ex parte* after the intelligence community conducted an appropriate review.

Those officials have since completed an additional review of the transcript, consulted with the relevant subject-matter experts, and obtained any necessary special approvals to enable submission of this classified material in court. The government has thus prepared a classified version of the transcript for the Court's *ex parte, in camera* review. That version includes the testimony of the witness from the Department of Justice and the statements of Members of Congress, except insofar as they discuss the classified testimony of employees of the Office of the Director of National Intelligence and the Federal Bureau of Investigation. As explained in the July 30, 2024 Notice (at 2), the government is unaware of any past circumstance in which classified testimony by the intelligence community at a classified hearing before Congress has been shared with a court for consideration in connection with civil litigation. This reflects the need to protect sensitive interbranch discussion of matters of national security. The declarations filed from employees of the Office of the Director of National Intelligence and the Federal

Bureau of Investigation are based on the same body of intelligence that was relied on in briefing Congress, as well as the key judgments in the intelligence community's assessment that were conveyed to Congress. *See* Blackburn Decl. ¶ 6.

In the interest of providing the classified transcript to the Court expeditiously, the government has not added portion markings to indicate the level of classification for each paragraph. From a handling standpoint, the entire classified transcript—other than the portions included in the unclassified, redacted version—should be treated as classified at the level indicated on the document. The classified version of the transcript is being lodged with the Department of Justice Classified Information Security Officer for appropriate transmission to the Court.

While conducting the comprehensive review of the transcript, officials in the intelligence community also identified a small amount of additional unclassified information that may be publicly disclosed. Accordingly, an amended unclassified, redacted version of the transcript is attached to this notice.

Respectfully submitted,

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EXECUTIVE SESSION

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LEGISLATION TO PROTECT AMERICAN DATA AND

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NATIONAL SECURITY FROM FOREIGN ADVERSARIES

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THURSDAY, MARCH 7, 2024

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House of Representatives,

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Committee on Energy and Commerce,

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Washington, D.C.

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The committee met, pursuant to call, at 10:36 a.m., in

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Room 2123, Rayburn House Office Building, Hon. Cathy McMorris

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Rodgers [chairwoman of the committee] presiding.

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Present: Representatives Rodgers, Burgess, Latta,

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Guthrie, Griffith, Bilirakis, Bucshon, Hudson, Walberg,

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Carter, Duncan, Palmer, Dunn, Lesko, Pence, Crenshaw, Joyce,

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Armstrong, Weber, Allen, Balderson, Fulcher, Pfluger,

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Harshbarger, Miller-Meeks, Cammack, Obernolte, Pallone,

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Eshoo, DeGette, Schakowsky, Matsui, Castor, Sarbanes, Tonko,

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Ruiz, Peters, Dingell, Veasey, Kuster, Kelly, Soto, Schrier,

25

and Fletcher.

1 The Chair. The committee will come to order.

2 As a reminder to the members, we are now in a classified
3 executive session. The information that we discuss here
4 should not be discussed outside of a secure location.

5 Our first witness is David Newman with DOJ, and then he
6 will be followed by Jonathan with ODNI.

7 Mr. Newman, you are recognized for 5 minutes.

8 Mr. Newman. Thank you. Thank you very much. Thank you
9 to the chair and thank you to the ranking member --

10 The Chair. Maybe pull the mike a little closer. Okay.
11 Yeah.

12 Mr. Newman. Sorry.

13 Thank you to the chair and thank you to the ranking
14 member for taking up legislation to fill critical gaps in our
15 national security.

16 The Chair. Yeah, still it is hard to hear. I don't
17 know. Can you pull the box closer to you maybe? Can you
18 pull the box, the whole box. There we go. There we go. Try
19 that.

20 Mr. Newman. Do you want me to go first or the IC
21 briefer? Which would be your preference?

22 The Chair. What do you all think?

23 Mr. Newman. I think Jonathan should go first.

24 The Chair. Okay. Jonathan. We are going to hear from
25 Jonathan first with ODNI. Okay, here we go.

1 Jonathan.

2 ODNI. Sure. Thanks. Good morning, everybody.

3 My name is Jonathan [REDACTED] (ph). I am the Deputy
4 Director for Investment Security at the ODNI, and I look at
5 critical technologies, economic threats. The group I lead
6 looks at economic threats and risks to the United States for
7 the ODNI on behalf of the intelligence community. The
8 briefing today for my remarks will be the TS/SCI level.
9 Thanks for having us.

10 So, as I understand, several of you have seen [REDACTED]

11 [REDACTED]
12 [REDACTED] The IC in that review of its
13 intelligence focused on three broad categories of concern.

14 The first was command and control links between TikTok
15 and the parent company ByteDance and PRC officials. The
16 second was on data collection risks involving the platform.
17 And the third was on PRC plans and intentions to try to both
18 suppress content and conduct foreign influence operations
19 globally.

20 Today I will discuss [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED].

24 The IC's bottom line [REDACTED]

25 [REDACTED] is that TikTok and the parent company ByteDance pose a

[REDACTED]

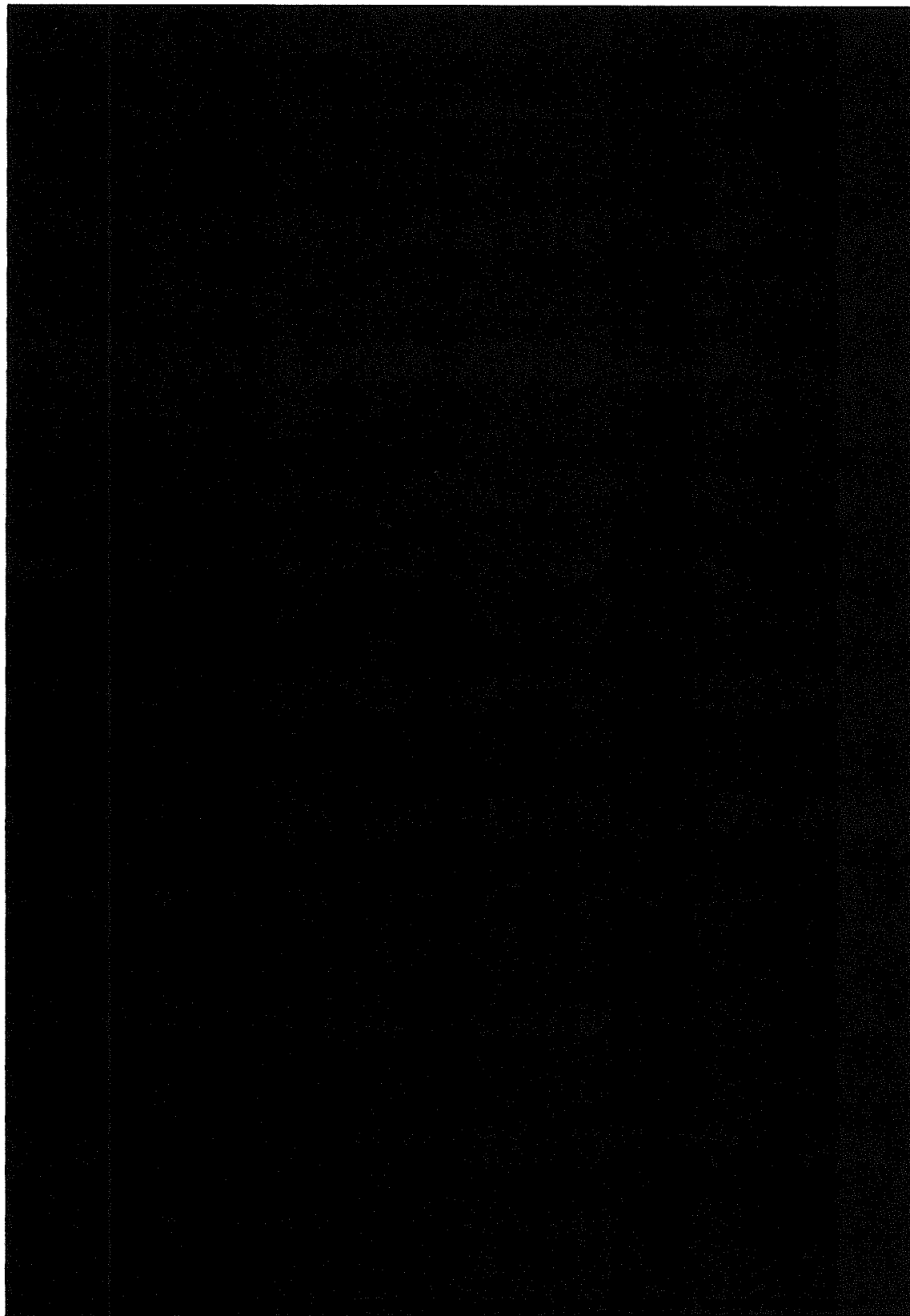
[REDACTED]

1 latent threat to U.S. national security because Beijing has
2 legal and economic leverage over these companies and,
3 therefore, significant potential leverage over their
4 operations.

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[REDACTED]

The Chair. Take however much time you need. So you can slow down a little bit --

ODNI. Oh, sure.

The Chair. -- so the members can digest. All right. That would be great.

ODNI. Sure. I was worried about the 5-minute rule, going over.

The Chair. I know. Okay. We will waive that for you.

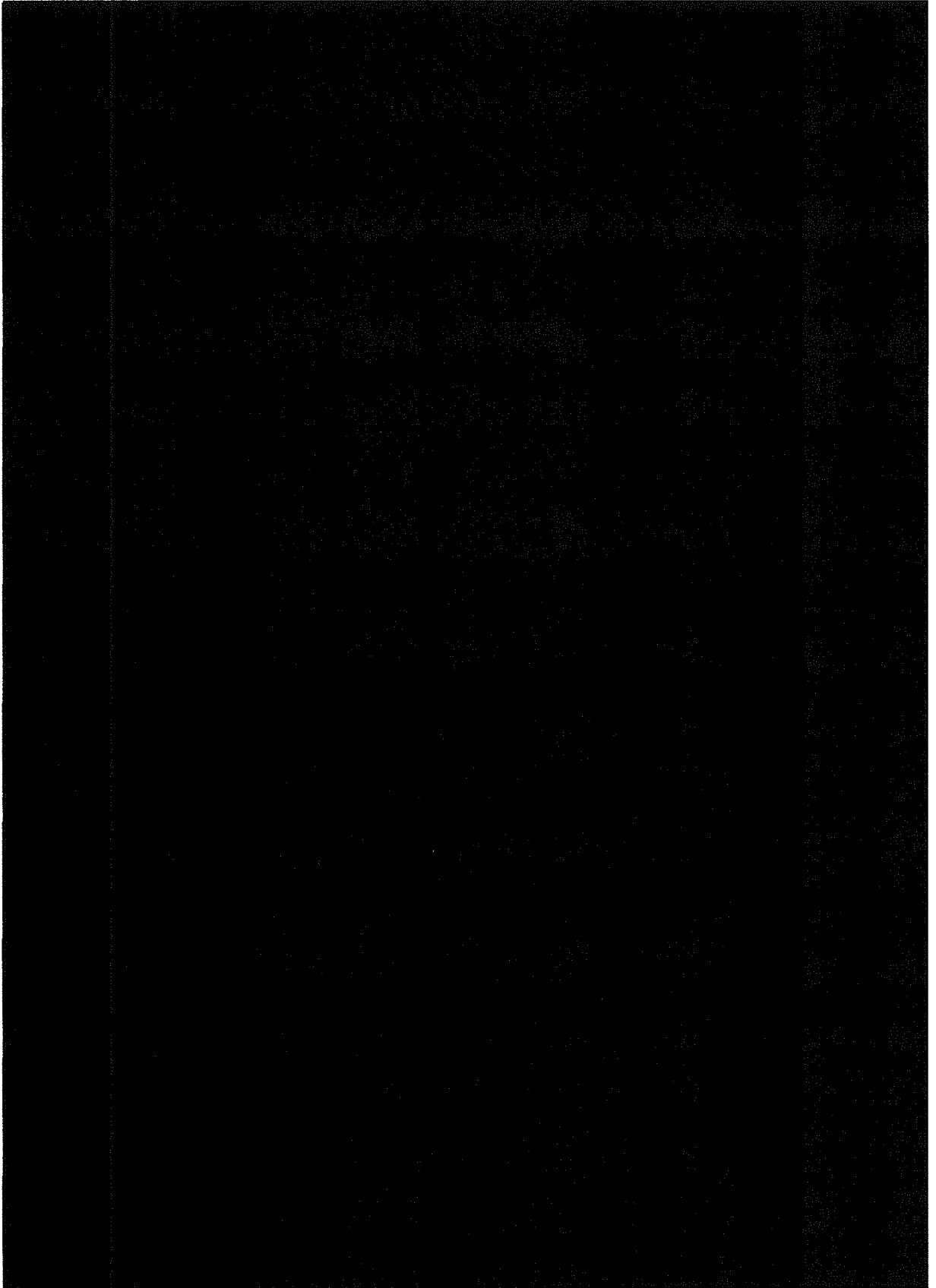
ODNI. Perfect.

[REDACTED]

From there, we are going to move in to talk a little bit about [REDACTED]

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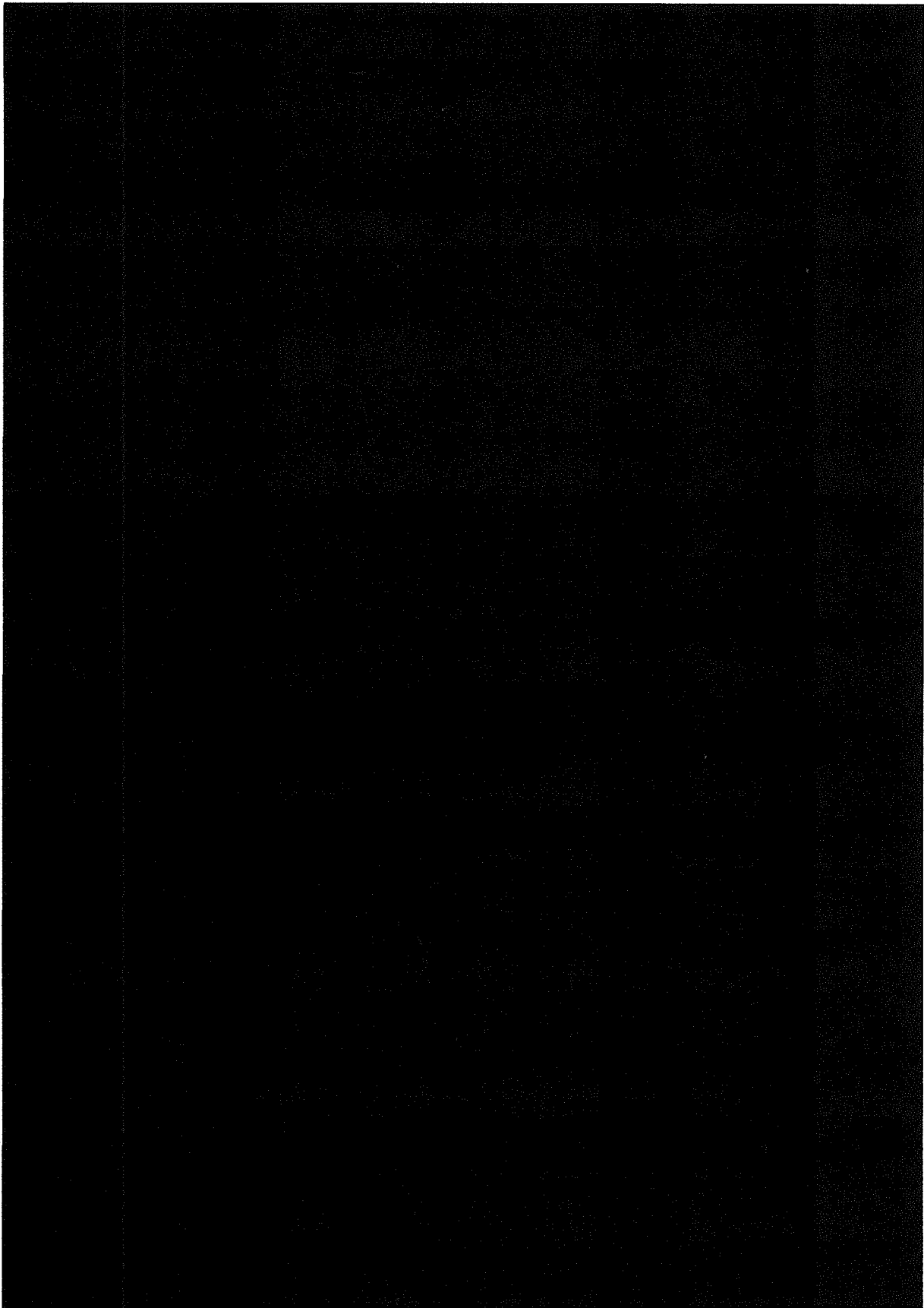
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I am happy to take questions.

The Chairman. Thank you, Jonathan.

Next we will hear from Mr. Newman with the Department of Justice.

1 Mr. Newman. Thank you. Thank you to the chair, thank
2 you to the ranking member for taking up legislation to fill
3 critical gaps in our national security authorities.

4 In my role as the Principal Deputy Assistant Attorney
5 General for National Security at the Department of Justice, I
6 confront on a daily basis the threats that you just heard
7 that the People's Republic of China poses to the United
8 States, to Americans. And increasingly, as we have seen,
9 that threat involves the PRC's attempts to weaponize
10 America's data against us. And TikTok and its parent company
11 ByteDance are a case in point -- and perhaps even Exhibit A
12 -- in that story.

13 Our intelligence community leaders and our national
14 security experts have warned and just reiterated that the
15 parent company, ByteDance, presents a clear and present
16 danger to our national security, a latent threat but a threat
17 that could be deployed [REDACTED]

18 [REDACTED]
19 First, as you just heard, TikTok collects vast amounts
20 of personal data from the more than 170 million Americans who
21 actively use the platform, [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Second, PRC -- TikTok relies on a proprietary algorithm
25 developed and maintained inside China to determine what

[REDACTED]

content to show and what content not to show to its American users.

And third, [REDACTED]

To date, Department of Justice leadership and other senior national security administration officials have identified only one viable solution for these national security risks.

TikTok must be divested and sold to a trusted buyer, severing the link that currently binds TikTok to Beijing and its PRC-based parent, ByteDance.

In addition, TikTok must move the data that TikTok collects about Americans and the development of its algorithm and source code outside of China and to a trusted location.

In response to that, TikTok has publicly offered a counterproposal, what it calls Project Texas. But, in our view, Project Texas would not achieve the national security objectives that we have.

Among other things, Project Texas would still allow TikTok's algorithm, source code, and software development to remain in key measures in China, and it would allow Chinese employees and ByteDance employees to continue to have

1 influence over TikTok's operations.

2 Last year, along with other officials from the
3 Department of Justice and the Treasury Department, I
4 personally told ByteDance's attorneys that Project Texas was
5 an inadequate solution. And I made clear -- we all did --
6 that the only solution that we have identified is a sale of
7 TikTok to a U.S. Government-approved purchaser.

8 But that has left us in something of a legal standoff,
9 because our current U.S. laws have gaps and limits that have
10 seriously hindered our ability to compel that result from the
11 company.

12 The executive branch currently has two key authorities
13 that have been used in the past to try to force just this
14 divestment of TikTok. The first is the International
15 Economic Emergency Powers Act, or IEEPA; and the second is
16 our authorities under the Committee on Foreign Investment in
17 the United States.

18 Both of those authorities were invoked first in the last
19 administration and then in this administration to try to
20 force a divestment of TikTok, but we are stalled out in the
21 courts.

22 That is for the following reason: IEEPA contains a
23 pre-internet statutory exception, the so-called Berman
24 amendment, after Representative Berman, for executive -- for
25 informational materials and personal communications.

1 And given the amount of First Amendment-protected
2 activity and expressive content on the platform, courts have
3 held in this case that the Berman amendment does not allow
4 IEEPA to regulate and ban TikTok.

5 CFIUS, the Committee on Foreign Investment in the U.S.,
6 is a very powerful tool to review foreign acquisitions of
7 U.S. businesses. The challenge with using it here is that
8 TikTok in the main did not originate from the acquisition of
9 a U.S. business. It grew organically as a foreign-controlled
10 application and it has worldwide popularity.

11 And in the D.C. Circuit, in response to the CFIUS
12 divestment order, TikTok the company put forward a very
13 compelling factual showing that their 2017 acquisition of a
14 U.S. company or a U.S. subsidiary called Musical.ly is not
15 the reason that that company grew in the United States.

16 And as a result, we are in a challenging place to argue
17 that the risks you just heard from TikTok arise from their
18 application -- from their acquisition of a U.S. business as
19 opposed to from their organic growth outside the United
20 States. Because of that, there are serious limits to what we
21 can do with CFIUS to try to bring this problem to heel.

22 So, put simply, as you know, TikTok is a sophisticated
23 legal adversary that understands the limits of our
24 authorities and the weakness of our negotiating position.

25 And that is why DOJ believes that strong new statutory

1 authority will be critical to compelling the separation of
2 ByteDance and China from the TikTok platform to address the
3 national security concerns.

4 We very much appreciate the committee's leadership in
5 marking up new legislation that takes into account our
6 learned experience and our technical assistance.

7 In particular, we appreciate that the bill you are
8 marking up today takes into account a number of proposals and
9 suggestions that we have made in the course of the drafting
10 process.

11 This includes making a detailed legislative record that
12 will be entitled to deference in the courts because of the
13 work that you have done and are doing today; allowing for a
14 qualified divestment to a U.S. buyer as an off-ramp to a ban,
15 which addresses some of the First Amendment issues that are
16 present in this fact pattern; and also providing targeted and
17 carefully circumscribed authority to address not just TikTok
18 and ByteDance, but also other future similar applications
19 controlled by foreign adversaries.

20 I also want to express appreciation for the work on the
21 draft legislation addressing data brokers, because even if we
22 succeed in forcing a divestment of TikTok, we know the
23 Chinese Government will be relentless in their efforts to
24 obtain the data of Americans through multiple means.

25 For too long there have been gaps in the law. We

[REDACTED]

1 dedicate extensive resources to preventing China and other
2 nation-states from stealing U.S. data through cyber attacks,
3 through insider threats, and through economic espionage, but
4 the law, Federal law, does not preclude them from simply
5 buying that data from data brokers. That gap began to be
6 closed last week when the President signed an executive order
7 that applied to adversary-controlled acquisitions of U.S.
8 data, but we believe that an executive order on its own can
9 be reinforced, strengthened, and made more durable with
10 legislation. And we appreciate the committee's interest in
11 this topic.

12 So just to end where I started, I want to thank the
13 committee tremendously for its leadership on this topic, and
14 I look forward to working with you and to answering your
15 questions.

16 The Chair. Thank you. Thank you for your testimony.

17 Does the FBI, do you wish to offer opening comments,
18 statement, Brent?

19 Mr. Grover. Good morning. Thank you. I can expand a
20 little bit on some of the comments that Jonathan had from
21 ODNI.

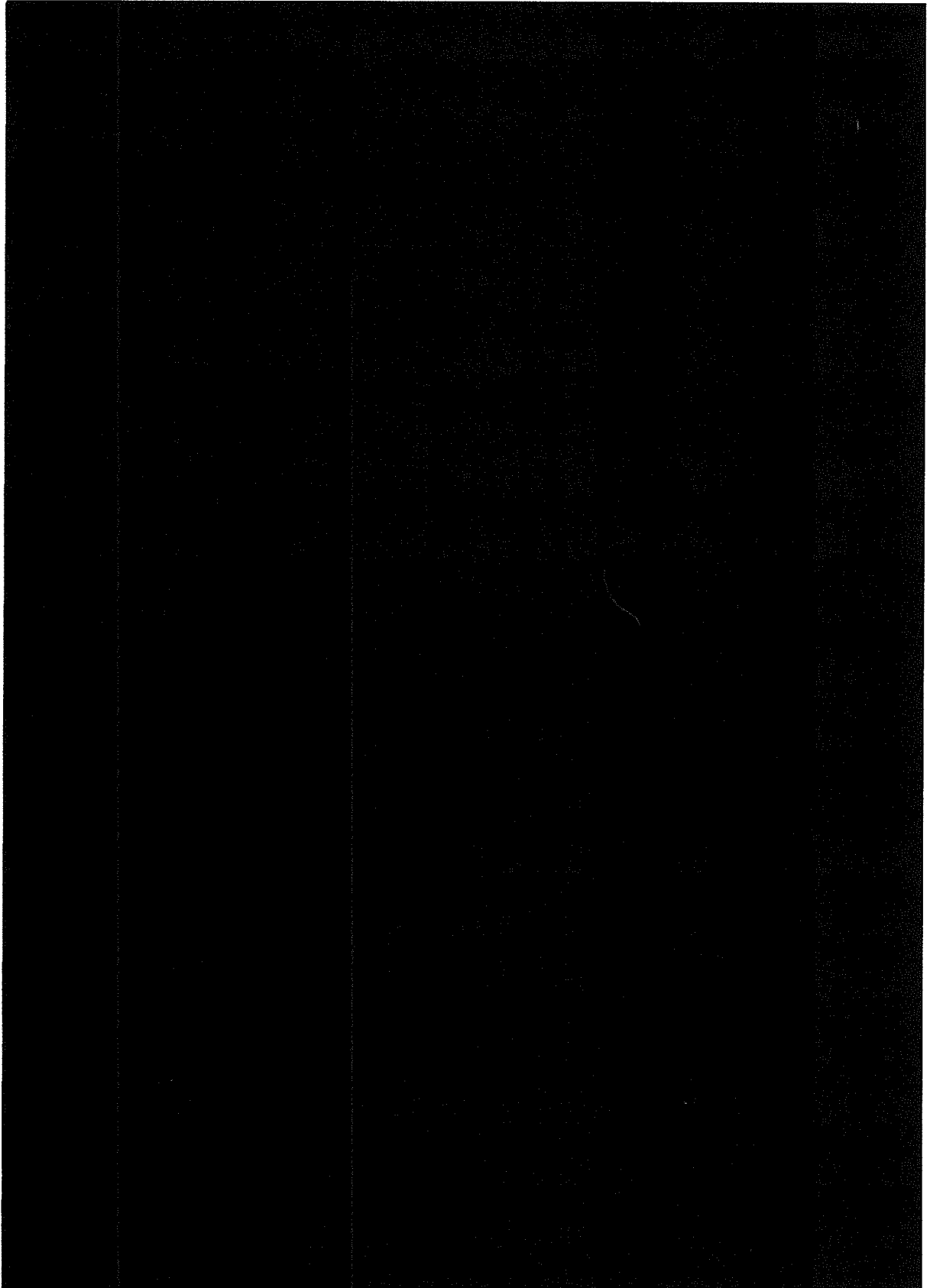
22 So I think, from the FBI's perspective, there are a
23 couple things I would like to highlight.

24 [REDACTED]

25 [REDACTED]

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11 The Chair. Thank you. Thank you. And his name is

12 Brent, just so you all know.

13 Okay. Appreciate again everyone being here. Thank you.

14 Some of you briefed us last week. I found that briefing

15 extremely helpful in the SCIF. Thank you all for being here

16 again today.

17 I wanted to start -- Jonathan, would you just speak more

18 to [REDACTED] that you

19 mentioned?

20 ODNI. Sure. So it is a great question. It is one we

21 grapple with not just in this instance but a lot of the

22 economic threats we look at.

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The Chair. Okay. Thank you.

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I would like to ask then how much -- how were these companies able to get a foothold in our country -- you talked about the state-to-state challenges -- given the lack of a nationwide standard for data privacy and security protections. I would like to ask each of you that question or whoever wants to respond to it.

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Mr. Newman. So it is a great question. I think the platform was able to grow because it is very popular, it has been popular worldwide, and because there are no laws or restrictions currently on the books that allow regulation or even divestment of an application just because it is under the control of an entity that is able to take direction from a foreign adversary.

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So at the time that it grew, my understanding is it was growing, in part, because it was very popular in the world. And there is a long history in China of allowing technology companies to grow multinationally, to take hold, and then to decide how best to use the fact that Chinese companies have grown in that way to harm national security.

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That is what we saw, for example, in the case of Huawei and ZTE in the telecommunications sector, where these products became very popular, in part for commercial reasons. They were cheap. They were using stolen IP. They were doing

1 lots of things to undercut their competitors. And then there



10 The Chair. Thank you. Thank you.


11 Mr. Newman, I wanted to ask you, because there have been
12 other bills proposed related to TikTok, banning TikTok. Some
13 have raised concerns that they run the risk of violating the
14 First Amendment.

15 I would like to ask you to speak to the divestment
16 option that is in the legislation before us and how it is to
17 help address the First Amendment challenges.

18 Mr. Newman. Thank you for the question.

19 We do think that that divestment off-ramp is very
20 important to the bill, and we appreciate seeing it in the
21 draft bill.

22 There is a long history in the national security space
23 of forcing companies to divest when they have problematic
24 foreign ownership. That is the remedy. That is the remedy
25 of last resort in the CFIUS process I mentioned earlier.



1 It happens regularly in that process, where companies
2 that are owned by foreign ownership go through transactions,
3 don't get the permission of CFIUS. If they get caught and
4 there are national security concerns, they are forced to
5 divest.

6 So there is a long track record of divestment being a
7 remedy that can occur with the right national security
8 justification in a way that accords with the First Amendment.

9 And just to say it plainly, our civil litigators, the
10 Department of Justice, stands ready to defend this bill in
11 court, to defend against arguments we know will be made by
12 TikTok, which has very sophisticated and highly paid lawyers,
13 and to litigate these questions in the courts.

14 The Chair. Okay. Thank you.

15 The chair recognizes the ranking member, Mr. Pallone,
16 for 5 minutes.

17 Mr. Pallone. Thank you, Madam Chair.

18 I am going to ask Mr. Newman my question just because
19 there is not a lot of time.

20 You know there are people out there who don't want to
21 ban or divest TikTok. And, of course, they are already
22 calling our offices. And the question they ask is: Why is
23 TikTok a greater risk than Facebook or X, for example? Why
24 are you picking on them?

25 And my understanding from what you said at the briefing

[REDACTED]

1 last week was that because TikTok was essentially owned by
2 Beijing that that puts it in a different category. There are
3 a couple other places like that too.

4 So is that the distinction, is that the reason why
5 divesting TikTok is a bigger concern than all the
6 misinformation, et cetera, that is on Facebook, X, et cetera?

7 Mr. Newman. That is exactly right. From a national
8 security perspective, we see it as a question -- it is a
9 question of kind and not degree when you have foreign
10 adversary ownership and direction of a platform. And that is
11 what you have in the case of TikTok.

12 We understand that there are a number of questions and
13 concerns about U.S. social media applications, and I know
14 there are other proposals to address them. But there is a

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 We are not trying to ban the platform. We are just
20 trying to make sure it gets in the hands of responsible
21 ownership.

22 Mr. Pallone. All right. Then the second question I
23 have is -- the chair kind of got to it.

24 The Biden administration has stated an interest in
25 further strengthening H.R. 7521, to put it, as they say, in

[REDACTED]

1 the strongest possible legal footing. And obviously TikTok,
2 as you said, has all kinds of lawyers.

3 So my question is, could you just tell us briefly what
4 the DOJ litigators consider to be the biggest litigation
5 risks in the bill and if there are some revisions you think
6 that would deal with that problem?

7 I mean, I know it would probably take an hour and I am
8 asking you in a minute or so to tell us.

9 Mr. Newman. Sure.

10 So briefly, again, we stand ready to defend the bill in
11 its current form in court. So I think that is important as a
12 starting point.

13 It is the case that if litigation concerns were the only
14 concern, we would have an additional argument if there were
15 executive branch findings and executive branch process in
16 addition to the congressional findings and congressional
17 action that the bill would impose on TikTok and ByteDance,
18 and that would give us an additional argument. And we did
19 propose that or at least offer that point during the
20 technical assistance.

21 At the same time, I do understand that there are policy
22 considerations that go into that question. And the work that
23 Congress has done, to make findings, to give process, to have
24 the hearing that this committee had with TikTok's leadership,
25 definitely helps us to buy down that risk.

1 So at the end of the day, again, as a litigator, you
2 always want to walk into court with as many arguments as
3 possible, but we think we have a number of arguments to
4 respond to litigation in this case.

5 Mr. Pallone. And then, from what you said earlier, Mr.
6 Newman, you -- the way this bill is set up, it still would
7 have to be -- the administration, whoever it is, would still
8 have to make this determination before the divestiture
9 occurred, right? And so that would involve additional
10 findings and hopefully ways for you to bolster the case in
11 court. Is that correct?

12 Mr. Newman. That is right. There is discretion to
13 determine what counts as a qualified divestment in the case
14 of TikTok and ByteDance, and so we would have discretion in
15 that area.

16 It is also the case that there is an opportunity for the
17 administration to make potentially additional findings to
18 reinforce the national security concerns that the Congress
19 would have recognized in enacting this bill.

20 Mr. Pallone. All right. Now, just quickly yes or no.
21 You, I think, already said you agree that Congress should
22 prohibit the data brokers from selling Americans' sensitive
23 personal information. I think you already answered that
24 question as yes, correct?

25 Mr. Newman. Yes, in general. And the executive order

1 that my division is enforcing is one effort to do that, and I
2 know the legislation is trying to do that in an even more
3 comprehensive way.

4 Mr. Pallone. And then lastly -- you can answer yes or
5 no too -- while this -- while what we are doing today is a
6 good start, you also agree that we need a comprehensive
7 Federal privacy law that ensures that consumers have
8 meaningful control over their personal information beyond
9 what we are doing today?

10 Mr. Newman. So I am here in a national security role,
11 so I am a little bit limited because that is a shared
12 account.

13 But what I will say is, as a general matter, I know that
14 the administration has called for more comprehensive privacy
15 legislation. And, as a national security official, a lot of
16 times the privacy concerns and the national security concerns
17 are reinforcing of one another. And I think you see that
18 with respect to data brokers and you see that with respect to
19 TikTok.

20 Mr. Pallone. Thank you. Thanks so much.

21 The Chair. The gentleman yields back.

22 The chair recognizes Mr. Burgess for 5 minutes.

23 Mr. Burgess. Thank you.

24 And I think this question is for ODNI, but, law
25 enforcement, please feel free to weigh in.

1 When we had the briefing a week or 10 days ago in the
2 SCIF, [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 But I left there [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 ODNI. Sure. It is a great question. And I will also
9 allow FBI to kind of answer it as well.

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Probably you heard last week from my boss, the Director
20 of Investment Security, [REDACTED]

21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 Mr. Burgess. And let me just ask you, along that line,

[REDACTED]

[REDACTED], does that rise to the level that would require this type of action by the legislative branch?

ODNI. That is a good question. Let me defer to --

Mr. Newman. I think it is an example of the clear and present danger we face. And in the national security world, we often try to act before the action occurs, you know, to the left of boom is what they say.

[REDACTED]

Mr. Burgess. Okay. Fair enough.

[REDACTED]

Is it a difference or is that something that you all monitor as well?

Mr. Grover. Again, sorry, apologies. My name is Brent Grover -- I failed to introduce myself earlier -- Section Chief of the China Intelligence Section at FBI.

[REDACTED]

[REDACTED]

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15 Mr. Newman. If I can make one very brief additional
16 point to your good question.

17 Mr. Burgess. Sure.

18 Mr. Newman. I think there is also an aspect of

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Mr. Burgess.

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Let me just ask you one last thing. What prevents the administration from saying they want to ban some other app or some other thing that people use? What if they decided that some conservative outlet was too conservative and they were going to stop that?

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Mr. Newman. So with respect to the legislation, the bill that has been proposed, there are some very specific findings and criteria that have to be met in order for the executive branch to act.

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That includes control by a foreign adversary. It includes a very high number of users. It includes a series

1 of findings about the national security threat that the
2 application poses. And in the main, I think that that would
3 not apply to most of the scenarios that you are talking
4 about.

5 Mr. Burgess. Thank you very much.

6 I yield back.

7 The Chair. The gentleman yields back.

8 The chair recognizes Ms. Eshoo for 5 minutes.

9 Ms. Eshoo. Thank you, Madam Chairwoman and our minority
10 leader on the committee.

11 Thank you, gentlemen, for your help today.

12 I think that it is important to note in this undertaking
13 that this is not a banning. This is not a banning. This is
14 about divestment.

15 And we understand that in terms of your presentation
16 that there are limits to the present laws, and you went
17 through that I think very well, Mr. Newman.

18 I wasn't aware of the executive order on data brokers,
19 but I welcome it. I don't know -- that is an important hole
20 that needs to be filled, because it just leaves the door so
21 wide open and essentially could make a mockery of our taking
22 the steps that are at hand, at least in my view.

23 You spoke about defending in court, Mr. Newman, and the
24 bill establishes one track for ByteDance and another for
25 other foreign adversary-controlled applications. That is a

1 -- it is a two-track approach, and it will give ByteDance the
2 opportunity to argue it is being selectively persecuted and
3 not provided the same due process rights as other companies.

4 So can you allay my apprehension about that? I think
5 that that needs to be discussed and that you walk into court
6 with the tightest case possible. Because there have been
7 other attempts and the courts have turned them down, and that
8 should be highly instructive to us.

9 Mr. Newman. So it is a great question. I think they
10 would make that argument, because they have, again,
11 very sophisticated lawyers.

12 Ms. Eshoo. I would if I were them.

13 Mr. Newman. I would say three points in response.

14 One, there have been congressional findings,
15 congressional process that underpins what is taking place
16 here. And I think we would absolutely point to those and the
17 record that has been compiled and the work that all of you
18 are doing.

19 The second is, again, there is a long track record of
20 divestment of companies in the national security space when
21 they have problematic foreign owners. That is what we saw in
22 CFIUS.

23 I spoke at the briefing about, for example, one instance
24 of a U.S. application bought by a Chinese buyer and they had
25 to divest. And divestment, as to your point, is different

1 from a ban, and that is really what this bill requires, is
2 divestment.

3 And then the third is, there is a severability provision
4 in the bill. In other words, if for whatever reason those
5 arguments worked -- and, again, we would argue that they
6 shouldn't work -- the executive branch could go back and
7 build a record under the more general provision against these
8 two companies and go back into court and use that record to
9 achieve the same outcome.

10 And so there is a belt and suspenders built into the
11 bill under which we could use that second option if, contrary
12 to the arguments that the Department would be making, a court
13 found that the first provision was problematic for some
14 reason.

15 Ms. Eshoo. Well, that is most helpful.

16 [REDACTED]

17 [REDACTED]

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19 [REDACTED]

20 Mr. Newman. [REDACTED]

21 [REDACTED]

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Ms. Eshoo. Well, thank you for that.

I would just say to each one of my colleagues on the committee this is going to be a highly covered issue when we leave our committee hearings and undertakings, and I think that each member needs to stress the following.

The United States of America is not banning. We are demanding divestment for the purposes of our national security, full stop.

Thank you.

The Chair. The gentlelady yields back.

The chair recognizes Mr. Latta for 5 minutes.

Mr. Latta. Well, thank you, Madam Chair.

And I am going to ask a rhetorical question of all three. Does the CCP allow any U.S. apps or foreign Western apps like TikTok in communist China? That I assume --

Mr. Newman. To answer your question, a rhetorical question, the Chinese Government would never allow the degree of freedom of access that we allow to the United States, and that is one of the differences between our system and their authoritarian system.

Mr. Latta. Thank you.

[REDACTED]

1 And to our intelligence agencies, I won't use names
2 since we didn't have names originally, but let me ask this
3 question.

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ODNI.

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Mr. Latta. Okay. . Thank you.

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Mr. Newman, I know -- again, thanks for being with us again. And this has come up multiple times, but in the confidence of defending this lawsuit, I assume you have looked at this on a 360 degree, how all the different arguments they are going to make on the TikTok side, because you had mentioned that there is a long history of forcing divestment of a company.

But the question is also in this situation is let's just say that how confident are we that as soon as -- let's just say they might have to divest -- that all this information hasn't already been transferred to China to begin with?

Mr. Newman. So it is a great question. I know it is one we spoke about in the briefing.

The legislation requires the President to make certain

1 determinations of what is a qualified divestment. It
2 requires the executive branch to make those determinations.

3 And the core of that is to confirm that they have
4 severed the link between the new U.S. ownership of the
5 company and Beijing.

6 And so, to your point, not every divestment would
7 qualify, only divestment to a bona fide real buyer who is no
8 longer subject to doing the bidding and control of the
9 Chinese Government.

10 Mr. Latta. Okay. And again, because, again, I guess I
11 keep coming back to it because of the divestment question.
12 Because, again, in the history that we have had, and you said
13 there are two authorities in the law, and examples from
14 previous adversaries we might have out there that had
15 divestment.

16 But have we ever had a situation where it has been set
17 up like this where, okay, let's just say it is a defense
18 system and that they have to have the divestment.

19 You might be able to have that fix easily in there,
20 because you have got it -- if it is, let's say, a missile
21 system, you go back and say, okay, we are going to make sure
22 that whatever software was there has been changed.

23 But, again, I guess I keep going back to the question is
24 how confident are we going to be that this information that
25 is already out there, and it is just -- it is there, and in a

1 press of a button it could -- it is probably there already.

2 I don't trust them to begin with. I assume that they
3 have already got it.

4 But I am just concerned, as you look -- you don't have
5 to answer right now on that -- but I am just concerned about
6 that as you look at your -- on the defending this in court.

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1 [11:20 a.m.]

2 Mr. Latta. For the FBI, quick question.

3 You know, one of the things you mentioned in your
4 testimony about [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Mr. Grover. [REDACTED] [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Mr. Latta. Okay. Thank you.

22 And, again, and as my friend from California brought out
23 that this is not a ban but we have a divestiture, that I
24 think this is the information that we have to make sure of,
25 that the American people understand that we are not banning

[REDACTED]

1 anybody. We are just making sure that it is safe for them to
2 use a certain app.

3 So I appreciate you all being here.

4 Madam Chair, I yield back.

5 The Chair. The gentleman yields back.

6 The chair recognizes Ms. DeGette for 5 minutes.

7 Ms. DeGette. Thank you very much, Madam Chair.

8 Thanks for all of you for coming.

9 I want to start with you, Mr. Newman, about the
10 constitutional issues. And I know you said there is a long
11 record of divestment of companies and so on.

12 Have we ever had legislation targeting a specific
13 company? Because that is part of what TikTok is arguing is
14 that we are specifically targeting them in legislation.

15 Mr. Newman. So you do have legislation that targets
16 companies in related context, so, for example, disqualifies
17 them from being Federal contractors, disqualifies them from
18 selling services to the Federal Government, speaks to certain
19 companies' ineligibility.

20 I do think, to your point, that the company will try to
21 argue that this is a form of impermissible punishment, that
22 the Constitution --

23 Ms. DeGette. And do you think there is legal precedent
24 that you have to say that is not the case?

25 Mr. Newman. I do, because I think fundamentally our

position is this is not punishment for this company. This is not a ban on the company. This is an effort to compel something that we do regularly in the national security space to force a divestment of problematic ownership.

Ms. DeGette. We don't do legislation specifically targeted at companies in the national security. We do require divestment in the nat- -- I mean, that is the difference, right?

Mr. Newman. There is a Federal statute under CFIUS that allows divestment --

Ms. DeGette. Right.

Mr. Newman. -- across a number of companies.

Ms. DeGette. I understand.

Mr. Newman. And there are instances where Congress will highlight national security risks of specific companies.

Ms. DeGette. Okay. My second question is, can you briefly tell us the difference between -- tell us what happened in the Montana case where in November the U.S. Court judge ruled that the Montana ban was not constitutional.

Mr. Newman. So there, that ruling, as I understand it, rested on First Amendment grounds.

Ms. DeGette. Right.

Mr. Newman. And it reflects the fact that there is -- first of all, there is a lot of First Amendment protected activity that takes place --

1 Ms. DeGette. But did the Montana law have some of the
2 provisions that we have in this bill?

3 Mr. Newman. States and the Federal Government are very
4 differently situated when it comes to legislating in the
5 national security interest --

6 Ms. DeGette. Okay. But my question is --

7 Mr. Newman. -- and the Federal Government --

8 Ms. DeGette. -- did the Montana law have some -- was it
9 structured the way we are or was it structured a different
10 way?

11 Mr. Newman. I am probably not an expert on that law,
12 but it -- the fundamental difference from my perspective is
13 that Congress and the Federal Government has the power to act
14 in the national security interest in a way that States often
15 do not.

16 Ms. DeGette. I am going to try to get some more
17 information about what that Montana law said.

18 Now, I have a question for either of the other two
19 witnesses here, which is, when we had our big hearing in this
20 committee last year, TikTok came in and they talked about
21 this Texas project. They were transferring management of
22 TikTok to Oracle, and this was their whole big argument to us
23 about how this was taking it independent of PRC.

24 Can you guys comment on that effort and why you don't
25 believe that that is sufficient to get to -- to gain the

independence that we need?

ODNI. Sure. Just generally,

Ms. DeGette. So what you are saying is,

ODNI.

Mr. Newman. And if I could just add a couple of points.
First, under their Project Texas proposal, you would still
have ByteDance executives, you know, directing certain of the
activities of TikTok. And you would still have a lot of
synergy between TikTok's U.S. application and the TikTok

[REDACTED]

1 Global platform selling ads, promoting certain content for
2 commercial reasons, understanding sort of the commercial
3 metrics that they would need to be responsible owners. As a
4 result, you would see a lot of data moving back and forth
5 even if they were in good faith.

6 And because we are concerned that they are not in good
7 faith and we, the Department of Justice, and the FBI would
8 probably be the ones to have to catch them, we are very

9 [REDACTED]

10 [REDACTED]

11 [REDACTED] [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Ms. DeGette. Thank you.

15 Thank you very much. I yield back.

16 The Chair. The gentlelady yields back.

17 The chair recognizes Mr. Guthrie for 5 minutes.

18 Mr. Guthrie. Thank you. Thank you, Madam Chair. Thank
19 you for the time.

20 Thank you for being here for this important hearing.

21 So I guess, Mr. Newman, I will address this to you. So
22 you have used terms today, clear and present danger,
23 controlled by foreign adversary, foreign ownership and
24 direction.

25 And I know everything in China, if you have a local

[REDACTED]

[REDACTED]

1 market, you have a communist overlord. We had the chair --
2 the CEO of TikTok before us. And when we asked him any
3 connection, any -- any question that we would ask him with
4 any question of the CCP, the PRC, he dismissed it as almost
5 incredulous that we would even ask, that we didn't understand
6 how business even worked that we would even ask. I mean, he
7 was pretty much insulting to almost every member that asked
8 him a question in that way.

9 And so what I am hearing from you and from all of you
10 today, [REDACTED]

11 [REDACTED] [REDACTED]
12 [REDACTED]
13 [REDACTED] ?

14 Mr. Newman. From -- I want to answer your question
15 carefully because, obviously, a false statement to Congress
16 is a crime. But what I would say is this. If the important
17 question for national security is, [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Mr. Guthrie. [REDACTED]

21 Mr. Newman. [REDACTED]

22 [REDACTED] that is what I am comfortable saying in
23 this setting. I think it is a very fair question.

24 ODNI. I was just going to, if I can, just add. What I
25 was trying to get to with the intelligence portion of this

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6 Mr. Guthrie. But it would be -- and I am going -- I
7 know we got more people that want to talk. But it would be
8 incredulous for us to believe that [REDACTED]

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10 So -- well, anyway, I think you answered my question as
11 far as you are going to answer. So thank you.

12 And I will yield back.

13 The Chair. Thank you.

14 The chair -- the gentleman yields back.

15 The chair recognizes Ms. Schakowsky for 5 minutes.

16 Ms. Schakowsky. Thank you.

17 I am just wondering who you envision would actually
18 purchase TikTok, and are there antitrust issues that could be
19 involved? And let me just also say that the concentration
20 that we have seen in the tech industry and the abuses that we
21 have seen of everyday consumers, I am concerned then, are we
22 going to now make it even tighter and have someone who is
23 already in the market? And so who would buy it?

24 Mr. Newman. Thank you for the question.

25 To break it apart into two pieces: First, would there

1 be a buyer for TikTok? I think our judgment is that there
2 would be a market to buy an app like TikTok, which is
3 profitable, which does have 170 million users, which does
4 generate a lot of revenue, and that ByteDance, although
5 subject to the direction and control of China, is a
6 for-profit company that would be very motivated commercially
7 to find a buyer and to structure its assets in a way that it
8 could get some value for this application.

9 Ms. Schakowsky. Do you foresee that there would be some
10 antitrust issues that we might want to look at?

11 Mr. Newman. I think it would be -- I am at the limits
12 as a national security lawyer, but I think it would be -- it
13 would depend, of course, on who the buyer was and what
14 conditions attached to that sale.

15 But there are a number of entities, including entities
16 that don't operate exactly in the space of the social media
17 world, and so it wouldn't raise the kind of horizontal
18 monopoly issues that could buy that platform, that would have
19 an interest in doing so.

20 Ms. Schakowsky. Okay.

21 Mr. Newman. I do think, as you say, there is a lot of
22 antitrust activity in the tech space, and I --

23 Ms. Schakowsky. I hear you.

24 I want to -- you mentioned that the President of the
25 United States has an executive order that deals with foreign

1 adversaries and, you know, said, well, that is kind of a nice
2 thing.

3 How does that fall short, in your view, and require that
4 we make this particular decision in Congress?

5 Mr. Newman. So that executive order for TikTok -- first
6 of all, that executive order is based on IEEPA, one of the
7 statutes I talked about at the beginning. And so it cannot
8 apply to any expressive data or communications data because
9 there is a limitation in IEEPA that doesn't allow it. And,
10 in fact, there is a carve-out in the executive order for that
11 type of data. So it wouldn't address, for example, the
12 transfer of communications on the TikTok platform back to
13 China because the Berman amendment to IEEPA does not allow
14 that.

15 More generally, I think, although we feel confident in
16 the legal basis of an -- of the executive order, it is always
17 the case when you have innovative government regulation in a
18 new area that it is on a stronger legal footing if you have
19 the benefit of both Congress and the executive specifically
20 authorizing regulation. And that is why we would very much
21 welcome congressional action.

22 Ms. Schakowsky. Let me ask this. Maybe this was asked.
23 But when we talk about bad actors and foreign adversaries,
24 what about Russia? We know that they intervened in our
25 election. So why are they not included here?

1 Mr. Newman. So the answer is I think Russia is a very
2 bad actor, and they are and should be included. So under the
3 executive order, there are actually seven countries that are
4 covered as foreign adversaries. One of them is Russia. And
5 under the legislation that we are discussing today, there are
6 four countries that are covered: Russia, Iran, North Korea,
7 and China.

8 And I agree. I mean, Russia doesn't have the same
9 commercial resources to try to dominate in these spaces. But
10 you see in applications like Hiverski (ph), you see in other
11 Russian technology companies that they are --

12 Ms. Schakowsky. We do see intervention right here in
13 our own country here, though, when it comes to the election.

14 Mr. Newman. Yes. And that was what they were able to
15 do on a platform they didn't own. You can just imagine what
16 the capability is of a foreign adversary on a platform that
17 is owned by a company under their control.

18 Ms. Schakowsky. So when you talk about CFIUS, so -- I
19 mean, there have been -- how does CFIUS fit into this? And
20 does this tell us anything about buying another company?

21 Mr. Newman. So CFIUS has a long history of requiring
22 divestment. So I think what it tells us is there is a way to
23 sell assets that foreign acquirers buy that raise national
24 security risks. And we have a process and a playbook for
25 doing so in the executive branch, and I think we would draw

1 on the lessons learned in trying to effectuate a divestment
2 here if this bill became law.

3 Ms. Schakowsky. Okay. Thank you.

4 And I yield back.

5 The Chair. The gentlelady yields back.

6 The chair recognizes Mr. Griffith for 5 minutes.

7 Mr. Griffith. Thank you very much, Madam Chair.

8 Let me start with what is going on today and just ask
9 you all to look into it. And that is, is that apparently
10 what we are hearing is that if you want to access TikTok and
11 you live in one of our congressional districts, you cannot
12 access TikTok without contacting our office first. And then
13 they encourage you to say be against this bill.

14 Does that cross any lines? I don't know the answer and
15 don't expect an answer today. Just want you all to look into
16 it. Can you assure me that you will do so?

17 That is an affirmative. I see a nod.

18 Mr. Newman. We will look into it, as we would anything.

19 Mr. Griffith. Okay.

20 Mr. Newman. I would also say it probably is a sign that
21 they are very concerned that this --

22 Mr. Griffith. Yeah.

23 Mr. Newman. -- bill will become law.

24 Mr. Griffith. It means we are doing something good.

25 All right. Number two, [REDACTED]

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ODNI. Yeah, absolutely, yes.

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Mr. Griffith. So we can't go about that when we go out on our stump speeches.

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ODNI.

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Mr. Griffith. I am just trying to make sure I get the rules right.

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All right. Mr. Newman, one of the things I was concerned about when the CEO was in here -- and it goes to what Jonathan was saying earlier about the control of ByteDance and TikTok being the same -- I repeatedly asked about their attorneys. And even though they claimed they had built a firewall between ByteDance and TikTok, they shared the same attorneys, not just the same firm with a structure under American judicial ethics firewall but the very same attorneys.

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Doesn't -- isn't that just exhibit A in why that they are not separated and why their, in fact, their internal workings in their administration are, in fact, still the same?

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Mr. Newman. One of the concerns we have with Project Texas and their current approach is that there is just too much communication going on between the parent, TikTok

1 Global, and TikTok U.S. And it is very hard to know where
2 the influences and interactions begin and end.

3 Mr. Griffith. Well, in reality, if they instructed
4 their attorneys to access the information that was collected
5 by TikTok U.S., their attorneys would have to do it and the
6 attorneys would have access to it because it's the same
7 attorneys.

8 All right. Enough said about that.

9 I was interested in Ms. DeGette's question. And I think
10 what she was looking for you didn't give her, and that is,
11 can you cite a piece of legislation where we specifically
12 named a company? It may apply to others, as this one may
13 apply to others. But, you know, in World War II, did we name
14 that you couldn't do business with a particular German
15 company or a particular Japanese company before -- and
16 particularly before hostilities broke out?

17 Mr. Newman. I would be happy to follow up and get
18 examples. But there are a number of instances, for example,
19 in Federal acquisitions --

20 Mr. Griffith. So you say they are out there where the
21 legislation specifically says XYZ corporation and any other
22 businesses currently in that same situation?

23 Mr. Newman. Correct. Outside the divestment context,
24 there are a number of places where for national security
25 reasons --

1 Mr. Griffith. You can get that to -- and I will say
2 Ms. DeGette probably want to see that too. But that is what
3 we are looking for is some evidence that we have authority to
4 do this and have done so in the past and not had it struck
5 down by the Supreme Court.

6 All right. And then I am okay with it. I said this in
7 our other briefing. I am okay with it. I think it is
8 important enough. But I do think that if we pass a piece of
9 legislation that TikTok can show reduces their market value,
10 I think that is a taking. I don't think it is -- I don't
11 think it is a bill of attainder, but I do think it is a
12 taking by the United States Federal Government. And we may
13 have to be a part of the sale or pay some money into the
14 company for it to be divested.

15 Do you agree or disagree? Have you researched it since
16 last we spoke?

17 Mr. Newman. So it is an excellent question. It took me
18 back to my law school property class. What I can say is I
19 spoke with our civil litigators about whether there would be
20 a takings clause litigation challenge brought and whether we
21 would be on strong footing. Their answer was they believed
22 that we would have good arguments against that, in part,
23 because of the national security backdrop to which all of
24 this is taking place and, in part, because we would still be
25 able to point to a broad number of qualified U.S. buyers,

1 just as we do in the CFIUS context.

2 But I think it is a good question. And like I said, I
3 had to study up after you posed it to me last time.

4 Mr. Griffith. Yeah. Well, and the interesting thing
5 about that is, even if we lost, it doesn't mean we can't
6 force the divestiture. It just means that we have to pay
7 a -- we will have to pass an appropriation to cover that.
8 Agreed?

9 Mr. Newman. If they -- if they succeeded, that would be
10 right. But, again, I think our current civil litigator's
11 judgment is that they could respond to it.

12 Mr. Griffith. Okay. And I am going go with their
13 judgment, but I just want us to be ready if we have to. It
14 is worth it. This is a big enough deal for the United States
15 of America's future that if we have to pay a little bit of
16 money to get rid of this cancer in our society, I am more
17 than willing to support it.

18 I yield back.

19 Mr. Cardenas. Will the gentleman yield for a point of
20 clarification?

21 Mr. Griffith. Yes.

22 Mr. Cardenas. Yeah, a point of clarification. The
23 divestiture requirement would be that they divest from
24 foreign adversary ownership. It doesn't mean that it has to
25 be an American purchaser. It could be as long as somebody

1 who purchased that portion of the company and that
2 divestiture is not on that list.

3 The Chair. Not a foreign adversary.

4 Mr. Newman. I think that is correct, but there would
5 have to be certain findings made that the effect of the
6 divestment was to cut off any connection to the foreign
7 adversary. And we would obviously look to see whether the
8 buyer was sufficiently insulated from Chinese or Russian --

9 Mr. Cardenas. But it doesn't require it be an American
10 purchaser.

11 Mr. Newman. It doesn't necessarily require that, no.
12 Thank you.

13 Mr. Griffith. I yield back the time I yielded.

14 The Chair. All right. The gentleman yields back.

15 The chair recognizes Ms. Matsui for 5 minutes.

16 Ms. Matsui. Thank you very much, Madam Chair.

17 I have a question for the FBI. Director Wray has
18 indicated the FBI has concerns that the Chinese Government
19 can control TikTok's recommendation algorithm.

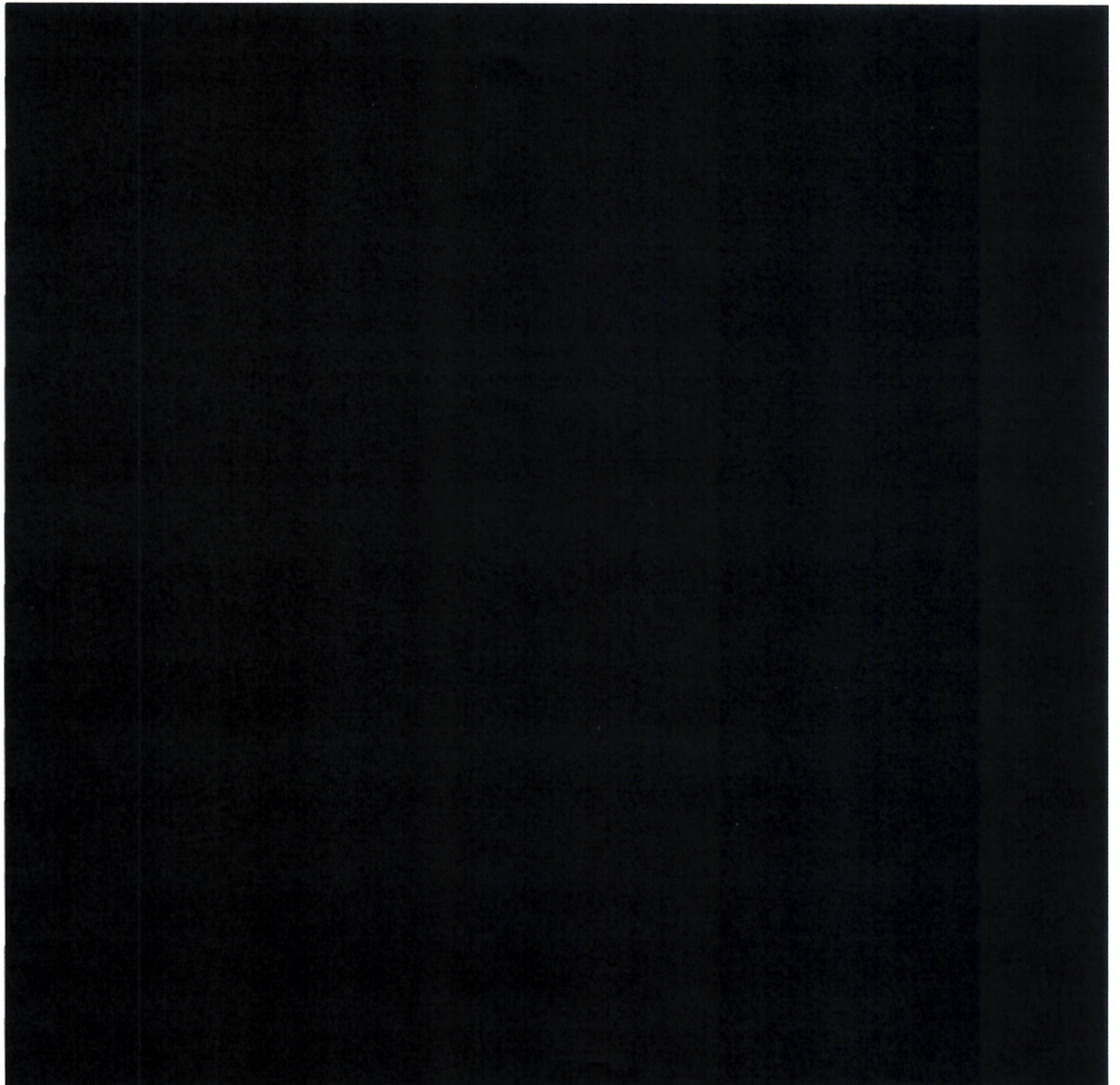
20 How did the FBI make this determination, and does it
21 believe the PRC has ever taken steps to assert control over
22 TikTok's algorithms or recommendation processes?

23 Mr. Grover. Thank you for the question.

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19 Ms. Matsui. Okay. Then, how about the other witnesses?
20 Do you have evidence or reason to believe that TikTok's
21 algorithms have been modified at the direction of PRC?

22 Mr. Newman. So I will let my intelligence community
23 colleague weigh in, but I know there are a number of outside
24 studies that suggest that some of the content on TikTok is
25 more favorable in its narratives to the PRC and less -- has



1 less present narratives critical of the PRC.

2 There are multiple reasons that could be and we don't
3 know definitively what they are, but it certainly raises the
4 concern --

5 Ms. Matsui. Right.

6 Mr. Newman. -- that that might be the case.

7 Ms. Matsui. Okay. Director Haines recently described
8 concerns about how the Chinese Government could utilize data
9 captured by TikTok, noting the capacity to then turn around
10 and use it to target audiences for information campaigns but
11 also to have it for future use is for a provided means.

12 Now, does the ODNI have evidence or reason to believe
13 information campaigns or any of these other strategies you
14 just described have been deployed against the interests of
15 the United States?

16 ODNI. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

[REDACTED]

1 Ms. Matsui. Okay. In addition to TikTok, what are
2 other data-gathering strategies the Chinese Government has
3 been utilizing against U.S. citizens?

4 Mr. Newman. So I am happy to start.

5 We have seen a broad effort by China to use U.S. data
6 and information against the U.S. Government.

7 One of the things that we are very focused on in the
8 Justice Department in my division is that they have taken a
9 number of actions to specifically target Chinese dissidents
10 and others inside the United States who are advancing
11 positions critical of the Chinese Government.

12 We have brought a number of cases, including a case that
13 I announced last year, the PRC police station case in
14 New York, including cases involving threats over the Zoom
15 platform that were made again dissidents, including
16 surveillance of individuals who they are trying to compel to
17 go back to China to face some purported criminal case called
18 Operation Fox Hunt that resulted in a criminal conviction a
19 few months back.

20 And so we have seen a large campaign under which the
21 Chinese Government is trying to project its authoritarian
22 rules using technology and using their access to the Chinese
23 diaspora in the United States.

24 Ms. Matsui. Okay. I understand that you don't believe
25 that Project Texas is going to be doing what it is supposed

1 to be doing.

2 Is there an opportunity to look at Project Texas on its
3 own to maybe assess what we can do with that particular data
4 collection?

5 Mr. Newman. If I understand the question, is there an
6 opportunity to kind of verify and audit whether Project Texas
7 is doing what the company --

8 Ms. Matsui. Exactly.

9 Mr. Newman. -- says it is doing?

10 Ms. Matsui. Exactly.

11 Mr. Newman. I think there is some -- the company hasn't
12 given us exactly that opportunity. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED] And I think that
18 is part of our concern is --

19 Ms. Matsui. Okay.

20 Mr. Newman. -- right now, they have a lot of incentive.
21 You know, TikTok knows that they are in the spotlight. They
22 know that the Chinese Government is being scrutinized. So I
23 am sure they are not doing very blatant and obvious things
24 right now.

25 Ms. Matsui. Okay.

[REDACTED]

1 Mr. Newman. But in the future, they might try to do
2 such a thing.

3 Ms. Matsui. Okay. Thank you.

4 And I yield back.

5 The Chair. The gentlelady yields back.

6 The chair recognizes Mr. Bilirakis for 5 minutes.

7 Mr. Bilirakis. Thank you. Thank you, Madam Chair.

8 This is an excellent briefing. I appreciate it, very
9 informative.

10 A question, I guess for Mr. Newman, but whoever wants to
11 respond. In the event that ByteDance does not divest under
12 the bill, are there still ways for end users to access the
13 app or website for TikTok other than through the app stores
14 they are using now? Essentially, will TikTok truly be
15 blocked or will it just be more difficult to access? I think
16 that is very important.

17 Mr. Newman. If --

18 Mr. Bilirakis. And, again, assuming the bill becomes
19 law.

20 Mr. Newman. If they didn't divest within the deadline,
21 there would be a number of prohibitions that would take --
22 kick in under the bill so that both the app stores, the Apple
23 app store, the Google Play store, as well as other service
24 providers and those who provide services in support of
25 TikTok, would face potential penalties if they continue to

1 support the app.

2 So my sense is, as a practical matter, it would be very
3 difficult for TikTok to continue to operate in the United
4 States once this bill became law, if they were unwilling to
5 undertake a qualified divestment.

6 Mr. Bilirakis. Okay. Thank you.

7 This legislation is not exclusive obviously to TikTok.
8 We have said that.

9 Are you actively investigating similar international
10 threats posed by other companies at this time? And you think
11 that this legislation, if enacted, of course, would be
12 invoked against in the foreseeable future based on your
13 knowledge of the threats, so international threats?

14 ODNI. Yeah. So from the ODNI perspective, [REDACTED]

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Mr. Newman. [REDACTED]

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[REDACTED]

But, of course, before we would use this authority, someone would have to build a record, look at the statutory requirements, and decide whether this specific criteria in the statute were met for those companies.

Mr. Bilirakis. Let me elaborate on my first question, unless the FBI wants to -- do you want to chime in on that, please?

Mr. Grover. [REDACTED]

[REDACTED]

Mr. Bilirakis. Okay. Now, what kind of an enforcement mechanism -- let's say that -- well, with regard to the bill but penalties. But let's say a -- another country, possibly an ally of ours, is cooperating -- they must not be a good

[REDACTED]

1 ally if they do -- but cooperating with the Chinese CCP or
2 ByteDance or what have you, and people here in the United
3 States have access to users, or they can't get it from
4 Google, et cetera, but they can get it from another country

5 Is that possible? Have we addressed that in the bill?

6 Mr. Newman. So I know that some of the provisions in
7 the bill are limited to the territorial United States and
8 they don't apply extraterritorially to actors outside the
9 United States. My sense is that is partly because,
10 obviously, the United States is much more limited in what it
11 can prohibit about extraterritorial application in a non-U.S.
12 company.

13 You know, to the point that was raised earlier about the
14 calls that you all have been getting from TikTok, I think the
15 fact that they are taking that step is a sign that they are
16 very nervous that if this bill became law, it would be a
17 devastating blow to their --

18 Mr. Bilirakis. So we are doing the right thing. That
19 is what it tells me. Thank you very much.

20 In the interest of time, I will yield back. Thank you.

21 The Chair. The gentleman yields back.

22 The chair recognizes Ms. Castor for 5 minutes.

23 Ms. Castor. Thank you, Madam Chair.

24 And thank you, gentlemen, for all you do to help keep
25 America safe.

1 The end of last year, the State Department Global
2 Engagement Center issued a first-of-its-kind 58-page report
3 that laid out Beijing's tactics and techniques for molding
4 public opinion, such as buying content, creating fake
5 accounts, how they spread their message, and use repression
6 to quash unfavorable opinions.

7 The head of that center said that -- warned that
8 Beijing's information campaign could eventually sway how
9 decisions are made around the world and undermine U.S.
10 interests. He said: Unchecked, the PRC's information
11 manipulation could in many parts of the world diminish
12 freedom to express views critical of Beijing, would transform
13 the global information landscape, and damage the security and
14 stability of the United States, its friends, and partners.

15 It went on and said: In social media, the CCP deploys
16 armies of bots, trolls, and coordinated campaigns to suppress
17 critical content and boost pro-Beijing messages.

18 Chinese-made phones sold overseas have been found to
19 come with censorship capabilities. Other experts say they
20 use it to sow discord and will use it to influence our
21 elections.

22 Are you familiar with this report?

23 Mr. Newman. I am very familiar with it, and I had a
24 chance to meet with some of the authors of it before it was
25 released.

1 Ms. Castor. So I -- Madam Chair, I would like to ask
2 our professional staff to consider entering into it the
3 record after you have an opportunity to review it.

4 Do you agree with what is set forth in this report?

5 Mr. Newman. I do agree with it.

6 The one note I would add as a context is the Global
7 Engagement Center's principal agreement is about information
8 outside the United States, rather than information inside the
9 United States, and that is for a host of reasons.

10 But, fundamentally, what they are trying to do outside
11 the United States, they are trying to do with even more
12 assertiveness inside the United States, given that they view
13 the United States as their biggest global adversary in the
14 21st century.

15 Ms. Castor. And, Jonathan, do you agree?

16 ODNI. Yeah, we agree from the ODNI perspective too.

17 Ms. Castor. And Brent?

18 Mr. Grover. The focus there being, externally, we are
19 aware of the report and we are -- it is not a principal area
20 we are looking at in the FBI.

21 Ms. Castor. All right. So we know that young social
22 media users are prime targets. They are targets for
23 surveillance and espionage. And like many of my colleagues
24 here, I have advocated for modern guardrails on algorithmic
25 targeting, tracking practices that harm kids and young

1 people. It is not just exclusively TikTok. It is the other
2 big tech platforms. They use manipulative designs to addict
3 kids to their products and funnel them towards harmful
4 content for their own gain.

5 Mr. Newman, can you speak to what is going on here with
6 using TikTok to target young people in the United States?
7 And what impact would that have long term on our national
8 security?

9 Mr. Newman. So it is a great question. There are
10 probably certain aspects of that question that is less in my
11 bailiwick as a national security person. But what I can say
12 is the information they are collecting now about children,
13 about young people -- and young people often do some, you
14 know, foolish and reckless things online -- could one day be
15 very valuable to a foreign adversary in the future if it was
16 being stored and kept in the hands of the Chinese Government.

17 So I think there are a lot of other harms that probably
18 arise that are out of the national security space but very
19 important. But from a national security perspective,
20 certainly young people, college students, high school
21 students, there is a lot in there that could be a value to a
22 foreign adversary.

23 Ms. Castor. And, Jonathan, I mean, we are talking about
24 millions of young people across America now who their data
25 has been gathered. [REDACTED]

[REDACTED]

1 [REDACTED] What implication does that have
2 for our national security long term?

3 ODNI. [REDACTED] [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Ms. Castor. And I will just close by saying we really,
17 the committee really needs a one-two punch here because, for
18 all of the weaknesses involving the Chinese Communist Party,
19 we don't have a fundamental privacy law in America that is
20 protecting all Americans, particularly kids. We don't have
21 any requirements for how these addictive models are designed.

22 And I really urge the chairwoman, I know her heart is
23 here, but we really need to move quickly to address this.

24 Thank you, and I yield back.

25 The Chair. The gentlelady yields back.
[REDACTED]

1 The chair recognizes Mr. Hudson for 5 minutes.

2 Mr. Hudson. I thank the chair. And I thank the chair
3 and ranking member for holding this very important hearing.

4 Thank you to the witnesses. Thank you for your service
5 to our country. Greatly appreciate it.

6 Mr. [REDACTED] (ph), does the IC honestly think

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 ODNI. [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 Mr. Hudson. Wouldn't common sense dictate that a
17 company like ByteDance really isn't concerned with the

18 [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 ODNI. And I think our job as intelligence professionals

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Mr. Hudson. Okay. At our hearing last year, I asked the question of the TikTok CEO about the access to information on other devices connected to the same local network as a device with TikTok on its app.

So, for example, if Mr. Pallone invited me over for a barbecue to his house and he gave me the password to his local network and I had TikTok on my phone, does TikTok have the capability of then uploading that off every device on his local network, laptops, other devices?

And the CEO told me that he would have to check with his engineers and get back to me. He never got back to me, and he also took part of my question out of context and made TikTok videos to try to humiliate me, to make me look like I didn't know how local networks work, to distract people from the central question I asked.

And so my question to any of you: Are you aware of this capability? Are you aware that it may be happening? And if so, is that -- do you view that as a threat?

Mr. Newman. I think your question speaks to a very important point which is, first, [REDACTED]

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[REDACTED]

And, second, even apps that are behaving responsibly collect a very broad amount of information and, over time, I am sure will collect more. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Mr. Hudson. But would you say it is a fair assumption to assume they have the ability to do that [REDACTED]

[REDACTED]

Mr. Newman. [REDACTED]

[REDACTED]

ODNI. [REDACTED]

[REDACTED]

Mr. Hudson. Well, so I have been lobbied heavily before this meeting. And I got a call the other day and I listened to them politely and then told them the same story and said I haven't gotten any information back.

[REDACTED]

1 And they sent an email to my staff saying that they --
2 my question was, do you have the capability to do it? The
3 answer was we don't do this without permissions.

4 And so the permission could be when you check the box
5 and download the app. I mean, that -- so I would -- I would
6 suggest this is something you all should look into. I think
7 it is a real concern.

8 Switching topics. I represent the largest military Army
9 base in the world, Fort Liberty, Fort Bragg. In November of
10 2023, Duke University released a study revealing that
11 personal information of U.S. military members, including
12 addresses, health status, was available for purchase for
13 minimum cost of online brokers.

14 Are you aware -- and, of course, my concern is for them
15 getting information about our servicemembers. They can track
16 their family members. They could blackmail them. There is a
17 lot of real concerns there.

18 Are you aware of any data brokers who have done this,
19 and are you aware of any foreign adversaries they sold this
20 information to?

21 Mr. Newman. Thank you for that question.

22 We are very concerned about just that fact pattern. The
23 data security executive order I referenced that was signed
24 last week has bulk thresholds about what is permitted to be
25 sold. But when it -- in relation to certain categories of

1 sensitive government data, including, for example, data on
2 servicemembers, on IC personnel, it -- the threshold is
3 essentially zero, because we are very concerned that anyone
4 who is trafficking in that data is trafficking in a dataset
5 that could be of great value to a foreign adversary.

6 And it is something I think we have expressed. I will
7 look to the IC colleagues, [REDACTED]

8 [REDACTED].

9 Mr. Hudson. So do we know, Jonathan, that it is
10 happening? Have we caught them doing it?

11 ODNI. [REDACTED] [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Mr. Hudson. Thank you.

21 And, Madam Chair, my time has expired, so I will yield
22 back.

23 The Chair. The gentleman yields back.

24 The chair recognizes Mr. Sarbanes for 5 minutes.

25 Mr. Sarbanes. Thank you all very much.

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And that makes me curious as to how you see that -- those interests being aligned or disaligned when it comes to the issue of divestment. In other words, do you think that the PRC is going to want to get involved or interfere somehow with the way the whole divestment project goes? And if so, what does that look like? That is the first question.

If they see the divestments really coming, are they going to speed up the kind of data collection that maybe they have not been doing now because they are trying to -- they are trying to showcase the or window-dress the Project Texas thing in the way you describe? So maybe they are not being busy. But if they see divestment on the horizon and have 180 days or whatever it is to go bananas and pull in as much data as they can, what does that look like?

So maybe address those two things, if you could.

ODNI.

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22 Mr. Newman. If I could just add one further point. I
23 do think that if this bill became law, it would in some ways
24 divide the interests of ByteDance and the PRC Government.
25 ByteDance does have shareholders. They would want to get

value for their investment, and they would want to sell. And I think for the inverse of the reasons that we are all here today, the Chinese Government would want to keep that application controlled in China.

In response to the last administration's effort to try to divest TikTok, we saw the Chinese Government put an export control restriction on the recommendation algorithm in an effort to try to thwart any sale or divestment, and I would expect that you would see similar things.

And my response would be, first, we -- China would never allow us to do such a thing to their national security. In other words, they put all sorts of limits on companies operating in China. And they don't allow us to have a veto on that by putting restrictions on our own companies. And so I don't think we should accede to that as a policy matter.

And, second, I do, think at the end of the day, that it will be a -- they will have a very difficult calculus to make, because if they ultimately allow this application, which is one of the most successful, multinational Chinese products in this space, to just be destroyed by the failure to divest, that poses a lot of risks to their reputation. And I could see them trying to find some kind of off-ramp that would allow the app to be sold.

I mean, it is a tricky position we put them in but, in my view, a position that they deserve, given their track

1 record in this space.

2 Mr. Grover. And the only thing I would add is just on
3 the point of whether or not the PRC would be incentivized to
4 intervene or weigh in, I think we have seen that historically
5 even the last year or two where we have charged individuals
6 for associating with the PRC Government for obstruction of
7 justice with respect to their efforts to kind of insert
8 themselves into a ongoing litigation with a PRC
9 telecommunications firm.

10 Mr. Sarbanes. Fourteen seconds, but what about the
11 accelerated vacuuming of data during an interim period
12 between now and a divestment?

13 Mr. Grover. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 ODNI. [REDACTED] [REDACTED] [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Mr. Sarbanes. Okay. Thank you.

25 The Chair. The gentleman yields back.

[REDACTED]

1 The chair recognizes Mr. Walberg for 5 minutes.

2 Mr. Walberg. Thank you, Madam Chair, and thanks for
3 this classified hearing.

4 And thanks to the panel for being here.

5 We know the large ties that American business has to
6 TikTok and the challenges there. And even as our offices are
7 being blown up by phone calls put forward by TikTok, and even
8 as my staff speaks to some of those calls and says we are not
9 banning, we are giving the opportunity to divest, it is
10 interesting, some of the callers then say, Oh, really, what
11 is wrong with that? But it shows the power that is out there
12 from this entity.

13 And so while knowing that U.S. business has significant
14 ties for business purposes, et cetera, what political or
15 public policy organizations in the U.S. have ties --
16 financial, membership, or otherwise -- to ByteDance? Do we
17 have any record of that, political or public policy entities?

18 Mr. Newman. I have no doubt, and I think we are seeing
19 today that they have a large number of lobbyists,
20 consultants, advisors. I have met with their attorneys. So
21 they are -- I have no doubt that there are numerous such
22 people in the United States. I don't have a list here today.

23 Mr. Grover. [REDACTED]
24 [REDACTED]
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[REDACTED]

Mr. Walberg. Well, I would suggest we might, in light of the power that is there, certain public policy organizations at the very least, we ought to check that out because of the power that would have.

Let me follow up with the FBI on Representative Hudson's question about the impact of information within our servicemembers' personal information.

Do we have the capability of monitoring the sales of personal information of military members, and does the FBI have legal authority to do this?

Mr. Grover.

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[REDACTED]

Mr. Newman. So it is a terrific question. I really appreciate it.

The specific executive order that was issued last week gives DOJ new authority to regulate the sale of different categories of data, including the kinds of data that I think are most concerning for U.S. servicemembers. That includes geolocation data, biometric identifiers, personal health and financial data.

And as I mentioned, it is a graduated approach where for most Americans, for most datasets, there is a bulk threshold, and that makes sense to avoid interfering with commercial activity. But for data sets that are exclusively government data, it gives the Attorney General the ability to set a much lower threshold, because we have seen that that data is so specifically valuable to foreign adversaries.

[REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

1 And that is of grave concern, which is what led to that
2 executive order and leads to our efforts to try to regulate
3 data brokers in this space when it comes to foreign
4 adversaries.

5 Mr. Walberg. Okay. Thank you.

6 I yield back.

7 The Chair. The gentleman yields back.

8 The chair recognizes Mr. Tonko for 5 minutes.

9 The gentleman yields back.

10 The chair recognizes Mr. Carter for 5 minutes.

11 Oh, did I miss somebody? Oh, so then Ms. Clarke. I am
12 sorry.

13 Ms. Clarke?

14 Ms. Clarke. I yield back, Madam Chair.

15 The Chair. Okay. The gentlelady yields back.

16 Mr. Cardenas.

17 Mr. Cardenas. Thank you, Madam Chair.

18 My office has gotten a lot of phone calls today. You
19 know, it just rolled off my back until somebody said that
20 they were my son, Andres. So I called my son, Andres.

21 And he says, Hello.

22 And I said, You called me.

23 He said, No, I didn't.

24 So that was just to show what they are doing. It is,
25 you know, people calling. We are used to that, right? But

1 for them to act like they are one of my family --

2 The Chair. Wow.

3 Mr. Cardenas. -- members, that was ridiculous.

4 So when it comes to elections, we have already seen some
5 nefarious actions happening from foreign actors in our
6 elections here in the United States.

7 So what do you know about countries like Russia or
8 whether or not they are planning or doing anything about
9 misinformation and disinformation relating to our upcoming
10 elections this -- at the end of this year?

11 You don't have to be specific. I mean, do we -- are we
12 concerned that that is going to be ebbing and flowing like we
13 have seen in the past?

14 ODNI. I think it is always a concern. And we were
15 talking about this before arriving. I am probably not the
16 best person to speak to it, but we can put in the foreign
17 malign influence folks, the elections coordinator from ODNI
18 in touch regarding specific information.

19 Mr. Cardenas. Specifically China, do we anticipate
20 China maybe getting more involved? Do we anticipate they may
21 be getting more involved in this come fall of 2024?

22 ODNI. I think generally the foreign malign influence
23 looks at all of our adversaries.

24 Mr. Cardenas. But is there any concern more now than
25 maybe we have had in the past?

1 ODNI. I am not in a position to say.

2 Mr. Newman. Again, I am not the intelligence community
3 briefer. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Mr. Cardenas. And the fact the data is somewhat
10 stagnant when it gets old, the fact that they are active
11 every single day with 170-plus Americans using apps like
12 TikTok, doesn't that enhance their ability to do something
13 like that, should they choose to?

14 Mr. Grover. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Mr. Cardenas. Thank you.

20 Does the data collected through apps like TikTok enhance
21 or strengthen people's ability to disrupt, not just
22 elections, but actually do other nefarious things with
23 Americans:

24 Mr. Newman. [REDACTED]

25 [REDACTED]

[REDACTED]

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Mr. Cardenas. And with the supercomputing that goes along right now, one of the things that I anticipate should be a concern is, for example, somebody's grandmother getting a call where she actually believes that that is her grandson's voice and, you know, saying that it is a desperate situation, send money, et cetera, now, that those kinds of things are more and more likely to happen.

But if adversaries have that information, then there is more likely they will be victims of that in America?

Mr. Newman. Yes. I think, to answer your question, yes, it is a big -- it is a very significant concern that they can build very targeted dossiers to go after American officials or others they want to intimidate.

Mr. Cardenas. One of the concerns that I have with the legislation is that it focuses -- I am not concerned about the fact that it focuses on foreign adversaries and countries and/or companies that are on our list. What concerns me is what if it is an American company or American billionaire, for example, who disregards the things that we have been discussing for the last hour and a half and just because they

are an American, does that mean that they are not going to be held to a standard of respecting people's liberties and data, et cetera?

Mr. Newman. So without question -- I think it is a great question. Without question, I think that there is also a lot of risk about the use of U.S. social media platforms by foreign adversaries.

What I would say in response to your good question is, first, I do think the legal authorities can be much stronger against foreign adversary-controlled applications. There are a lot of First Amendment interests at stake when you are talking about U.S. platforms and U.S. speakers.

And, second, we welcome engagement on whether it is data brokers or other privacy legislation that could help to address some of those concerns.

Mr. Cardenas. Thank you.

My time having expired, I yield back.

Thank you very much, gentlemen.

The Chair. The gentleman yields back.

The chair recognizes Mr. Carter for 5 minutes.

Mr. Carter. Thank you very much.

And thank you very much for your service to our country.

Let me ask you real quickly now. Mr. Sarpanes, I believe, touched on this and that is that if they -- if the Chinese Republican Party, if the Chinese party understands

1 that they are going to have to divest of this, that they are
2 going to speed up their efforts to collect, we are about to
3 have an election here. We are not going to have this done by
4 that time.

5 Are you preparing? Are you doing something that is
6 going to help us fight those people, those adversaries who
7 are going to try to impact that election?

8 Mr. Grover. So I will take it from the FBI's

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19 Mr. Carter. Right. All right. Let me ask you this.
20 If an American company or a friendly company buys TikTok,
21 what are they buying? Are they buying the equipment? Are
22 they buying the algorithms? What are -- what are they going
23 to get? I mean, if they get the equipment, is -- you know,
24 it is Chinese equipment. I mean, are they going to be able
25 to use it?

Are we going to have to -- you know, we have addressed this with Huawei and with some of the other in the Secure Communications Networks Act, the rip and replace. I mean, you know, to Mr. Griffith's point, are we going to have to pay for it, because essentially we are going to tell them, no, you can't use that? So we are going to have money available for you to replace it?

Mr. Newman. It is a good question.

I think that TikTok is a little bit different from, for example, Huawei in that if an American company were willing to pay something approaching the market value of TikTok, I would think they would do so with a plan to try to address some of the fundamental privacy and national security concerns that exist currently around the application. And they would have to have confidence that, going forward, the software code was being revised in the United States, that the app was not transmitting data back to China, and they would have to look for any kind of vulnerabilities or back doors in the system.

Sophisticated, large companies, I would think, would be economically incentivized to try to address those issues, but it would obviously depend on the structure of the transactions.

Mr. Carter. And that is going to downgrade the value of TikTok and they are going to come back at us and want to be

1 compensated for that. Don't you think?

2 Mr. Newman. They may try. But, for example, when we
3 order divestments in CFIUS, some of the same calculations
4 apply. Someone has to buy -- we had a divestment of Grindr,
5 which was a dating app that was bought by a Chinese company.
6 Whoever bought that app had to find a way to address some of
7 the national security concerns that existed, and people still
8 pay a price. It may bring the price down. It may limit some
9 of the buyers. But I don't think --

10 Mr. Carter. Right.

11 Mr. Newman. -- it would --

12 Mr. Carter. Right.

13 Mr. Newman. -- slow the market.

14 Mr. Carter. Let me ask you, when the CEO of TikTok was
15 here, I asked him about the collection of biometric data.
16 And, you know, it is the only time I have ever gone viral on
17 the internet, and they -- it wasn't in a good way. They were
18 making fun of me, and that is fine.

19 But my point is, have you gotten any examples of where
20 that has happened, where the apps are using biometric data or
21 collecting biometric data?

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[REDACTED]

1 [12:20 p.m.]

2 Mr. Newman. TikTok specifically or any?

3 Mr. Carter. Any of them.

4 Mr. Newman. Lots of apps collect biometric data,
5 genetic information, for example. Apps collect your
6 fingerprints.

7 Mr. Carter. What about TikTok?

8 Mr. Newman. TikTok -- at a minimum, you know that
9 TikTok has a tremendous database of some of the public, of
10 people's faces, of people's voices.

11 To the question that was raised earlier about being able
12 to spoof voices and faces, it is an incredibly powerful
13 dataset. And I think there is no question that over time the
14 richness of that data is just going to grow.

15 Mr. Carter. Okay.

16 One last question. We have noticed a rise of
17 anti-Semitism on the app. Are you seeing that? Is there any
18 proof of that that you can share with us?

19 Mr. Newman. I am aware of some of the outside studies
20 that have shown disproportionate narratives like that on the
21 TikTok app. [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Mr. Carter. But is it happening?

1 Mr. Newman. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Mr. Carter. [REDACTED]

5 [REDACTED] --

6 Mr. Newman. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Mr. Carter. Right. Okay. Well, again, thank you for
11 your services. This is very important.

12 I yield back.

13 The Chair. The gentleman yields back.

14 The chair recognizes Mr. Ruiz for 5 minutes.

15 Mr. Ruiz. Hi. Thank you for being here, all of you,
16 and thank you for your service.

17 Under this legislation, China is considered a foreign
18 adversary, requiring ByteDance to divest its ownership to a
19 nonforeign adversary.

20 And I want to go back to the comments and concerns about
21 the potential purchase of TikTok by an entity that then can
22 become a monopoly in this space.

23 So, under this legislation, I mean, is there a way that
24 we can prevent that from happening, or is this just a
25 reactionary effort?

1 And this is to you, Mr. Newman. What can we do to
2 safeguard that from happening during this divestment?

3 Mr. Newman. It is a great question.

4 I don't think anything in this act suspends or limits
5 the antitrust principles that apply to mergers and
6 acquisitions. So whoever bought the app would have to comply
7 with and assure antitrust regulators that they had met the
8 requirements of U.S. antitrust.

9 Mr. Ruiz. Does that happen after the purchase, or is
10 that something that will be evaluated to prevent a purchase
11 if that happens?

12 Mr. Newman. As I -- I am not an antitrust lawyer, but
13 as I understand it, you would have to still go through the
14 Hart-Scott-Rodino filings and the other processes that would
15 need to occur in order to decide if you could complete a
16 merger under U.S. law.

17 Mr. Ruiz. Okay. Given that the Protecting Americans
18 from Foreign Adversary Controlled Applications Act does not
19 define "executed" when it comes to the divestment of a
20 company, has the Department provided any potential guidance
21 on how it intends to define and interpret the execution of
22 such divestments?

23 Mr. Newman. I am not aware of specific guidance about
24 what that provision would mean. But, for example, in the
25 CFIUS context there are instances where someone will

1 temporarily provide the asset to a trusted third party, who
2 will hold it pending completion of a merger or sale.

3 So I don't know whether that is a possibility under this
4 law, but it does occur in the CFIUS context, where you find a
5 trustee or fiduciary to hold the asset until such time as it
6 can be sold.

7 Mr. Ruiz. Would that be a private company that would be
8 that trusted entity? Who would make up that third party
9 person?

10 Mr. Newman. So in the CFIUS context that I am familiar
11 with, sometimes you would find, for example, a board of
12 former national security officials who would operate the
13 company as a proxy board until such time as the foreign
14 ownership could be formally transferred to a new buyer.

15 Mr. Ruiz. Okay. We have had hearings on cybersecurity
16 threats to utility companies. We are having this
17 conversation about TikTok and the potential national security
18 threat that it poses. And we have not really addressed the
19 shortage of cybersecurity experts that we have in our
20 country.

21 And so I really recommend that this committee look at
22 ways that we can bolster the cybersecurity workforce that we
23 so desperately need in our country and how we can promote
24 cybersecurity hygiene with all American users of any device
25 so they can be more aware and protective of their

1 information.

2 With that, I yield back.

3 The Chair. The gentleman yields back.

4 The chair recognizes Mr. Duncan and for 5 minutes.

5 Mr. Duncan. Thank you, Madam Chair.

6 Thanks, guys, for being here.

7 I don't have TikTok on my phone. I don't have chatGPT on
8 my phone. I don't have WhatsApp on my phone, because of
9 foreign access to data there, although it is broadly used
10 across the globe.

11 I probably have watched TikTok reels via Instagram. So
12 the first question I have for you, should we be concerned
13 about any collusion or data access via Instagram or any other
14 social media app where TikTok videos are uploaded and viewed
15 by guys like me who are sitting in an airport just killing
16 time before our flight, watching reels?

17 Mr. Newman. 

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24 Mr. Duncan. Different apps?

25 Mr. Newman.  

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Mr. Duncan. Any other guys want to comment on that?

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ODNI. One thing I would just highlight is we have a

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Mr. Grover. And the only thing I would add -- I am also

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Mr. Duncan. I am going to switch gears, Jonathan.

[REDACTED]

1 Are there examples of TikTok moderating or curating its
2 content in response to a request from China or Chinese
3 Government?

4 ODNI. [REDACTED] [REDACTED]

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Mr. Newman. If I can just add one point.

15 ByteDance, which owns TikTok, [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 ODNI. [REDACTED] [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

1 Mr. Grover. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Mr. Duncan. That was my follow-up question. [REDACTED]

7 [REDACTED]

Can

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you elaborate on that a little bit?

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Mr. Grover. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

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Mr. Duncan. [REDACTED]

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Mr. Grover. [REDACTED]

15 [REDACTED]

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Mr. Duncan. Yeah. Okay.

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Madam Chair, I don't have any further questions. I do
have some time if any of my members -- I will yield to

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Mr. Griffith.

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Mr. Griffith. I just want to make sure when I do my
stump speeches I am not getting in trouble.

20 [REDACTED]

21 [REDACTED]

[REDACTED], is that something we can talk
about publicly?

22

23

Mr. Grover. [REDACTED]

1 Mr. Griffith. Okay. Thanks.

2 I yield back to the gentleman.

3 Mr. Duncan. Madam Chair, I yield back.

4 The Chair. Okay. The gentleman yields back.

5 The chair recognizes Mr. Peters for 5 minutes.

6 Mr. Peters. Thank you very much, Madam Chair. Thanks
7 for this hearing.

8 I would say, first of all, I am very impressed with your
9 command of this information. I am convinced. I don't have
10 an issue with going forward with this.

11 The difficulty, Mr. Newman, of you not having your civil
12 lawyers here is we don't know what happens next to the level
13 of detail that you are able to tell us about what is
14 happening now.

15 We are walking into a major lawsuit. I was going to
16 follow up on Mr. Griffith's thing. I think that you may have
17 misspoke. The issue of whether there is a takings and under
18 the Fifth Amendment, I don't have my phone so I can't look up
19 any of the language, but you have to establish a public
20 purpose. You have clearly done that. But I don't think the
21 public purpose affects the value of what you have to pay for.
22 the finding of a public purpose affects the value of what you
23 have to pay for if there is a taking.

24 And so I am thinking -- I am sort of thinking what does
25 the lawsuit look like? I assume they will argue the bill of

[REDACTED]

1 attainder. I assume that they will argue that there has been
2 a taking of a property. I don't know whether they will
3 dispute whether there is a public purpose, but they are going
4 to ask for money.

5 The overlay is that if Meta buys it, if Meta is the
6 buyer, we are going to have the antitrust concerns that
7 Ms. Schakowsky was talking about. And clearly, that could
8 affect the value, right, of what they get?

9 So I don't know if you have any preview for me of what
10 we are looking at in terms of the litigation we are going to
11 see and how this plays out, whether it is after a sale or
12 before a sale. What can you tell us about that?

13 Mr. Newman. It is a great question.

14 Mr. Peters. Thank you.

15 Mr. Newman. So, first of all, I did meet with the civil
16 litigators before coming here specifically in reference to
17 that line of questions.

18 And I did -- and one of the things that they told me is
19 that, first of all, there is a long doctrine of regulatory
20 takings and whether or not regulatory takings create
21 actionable eminent domain and takings clause cases.

22 In general the government wins a lot of those cases,
23 because every regulation has economic impacts on companies.
24 And as long as the regulation has a broader application and
25 purpose, typically that is able to get you past it unless you

1 have completely destroyed the value of the asset.

2 Mr. Peters. Although in this case, we are depriving
3 ownership. But go ahead.

4 Mr. Newman. Well, we are depriving ownership, but in a
5 way that is consistent with how the national security space
6 operates in this area.

7 I do know even from when the time that I clerked on the
8 Supreme Court that the takings doctrine has evolved. And I
9 am sure that, with their very highly paid lawyers, they will
10 make those arguments.

11 But fundamentally, the Civil Division litigators who
12 have been litigating against TikTok believe that they have
13 good arguments in response to the takings clause questions.

14 Bill of attainder, same thing. I think the question
15 would be, is this impermissible punishment of the company,
16 among other things? And we believe that this is not a bill
17 that imposes impermissible punishment. It imposes an
18 ownership change of this application and similar categories
19 of applications.

20 They will make First Amendment arguments, as was done in
21 the Montana case. But, again, I think the Federal Government
22 has a much stronger footing. And foreign actors generally
23 have lesser arguments under the First Amendment than do
24 U.S.-based companies and citizens.

25 Mr. Peters. So does this get filed the day after it is

1 signed, or do we wait to see if they are able to sell it?

2 Mr. Newman. I would think that when this gets signed,
3 there is a very good likelihood that they will seek to
4 litigate. I also think, though, that they are a for-profit
5 company and they will want to also explore having a buyer for
6 the platform.

7 I have been among the people directly negotiating with
8 the company, and I think the company has an incentive to
9 sell. Whether the Chinese Government will accede to that
10 right away I think is a separate question.

11 Mr. Peters. And how does the antitrust issue play into
12 the litigation if the buyers are Meta and Google?

13 Mr. Newman. My understanding is whichever company would
14 buy this would have to satisfy the antitrust regulators, as
15 would occur in an ordinary case.

16 Mr. Peters. Assuming that we don't want Meta, who has
17 got Reels as the only competition, to be the buyer, and we
18 have raised, as a country, some antitrust objection to
19 potentially void the sale, how does that affect the
20 litigation?

21 Mr. Newman. I don't know that that helps TikTok's claim
22 that this is a taking, because every large company is subject
23 to antitrust laws if it wants to sell itself to another
24 buyer.

25 But I do think, to your point, that it will be important

1 that whoever buys it is able to satisfy the antitrust
2 regulators that they have complied with U.S. antitrust laws.

3 Mr. Peters. All right. Well, it will be interesting to
4 see. But I really sincerely appreciate your work, and it has
5 been very professional and helpful. Thank you.

6 I yield back.

7 The Chair. The gentleman yields back.

8 The chair recognizes Mr. Dunn for 5 minutes.

9 Mr. Dunn. Thank you very much, Madam Chair. And let me
10 thank the ranking member as well for this hearing. It is an
11 important subject. It is complicated subject matter.

12 And as an aside. I would like to say I was stunned by
13 Representative Cardenas' story of the deepfake phone call
14 supposedly from his son.

15 So the first question, FBI, DOJ, one of you, are there
16 any true smoking guns evidence of TikTok targeting,
17 manipulating, blackmailing U.S. citizens with the data that
18 they collect?

19 Mr. Grover. I am sorry. Could you repeat the question?

20 Mr. Dunn. Sure. Any true evidence, I mean hard
21 evidence of blackmail, targeting, manipulation of American
22 citizens by TikTok or other similar applications?

23 Mr. Grover. [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Mr. Dunn. So my follow-up question would be to ODNI.

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It is the same question about military personnel, because we know they have a high interest in military personnel.

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And I with alarming regularity get notifications that my military record has been hacked again and again and again.

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Is there anything you notice?

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ODNI.

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Mr. Dunn.

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ODNI.

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Mr. Dunn. FBI, we mentioned this earlier, alluded to

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minors' use of TikTok. What do you think are the greatest

1 risk, briefly, the greatest risk to minors using TikTok at
2 this time?

3 Mr. Grover. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 but kind of the broader risks to minors would be outside of
8 my purview.

9 Mr. Dunn. I guess I am fortunate I am old enough,
10 because there were no cell phones when I was growing up.

11 ODNI, what CCP maneuvers can we expect following
12 implementation of this law so that they can continue their
13 collection and use of United States citizens' data?

14 ODNI. That is a great question. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 Mr. Dunn. Did you want to add to that?

24 Mr. Newman. [REDACTED]

25 [REDACTED]

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Mr. Dunn. So in the last year I have been added to the Select China Committee and the Artificial Intelligence Committee. And I have to tell you, the conjunction of those two and the threat that TikTok and similar applications present are magnified by my participation in both of those committees.

But I thank you very much, gentlemen, for your service, and thank you for taking time to be with us today.

Madam Chair, I yield back.

Mr. Latta. [Presiding.] Thank you. The gentleman yields back.

The chair now recognizes the gentleman from Florida's Ninth District.

Mr. Soto. Thank you, Mr. Chairman.

Thank you all for being here.

1 I believe the two bills do strike that right balance.
2 We need to protect Americans. We need to protect our
3 national security, our democracy.

4 We also need to protect access to a popular app called
5 TikTok, which millions of Americans enjoy, along with
6 Facebook and X and so many others.

7 Since today we are helping establish the record, it
8 would be great to hear from Justice, why isn't this a bill of
9 attainder, for instance?

10 Mr. Newman. So, first of all, I think the bill of
11 attainder clause is about impermissible punishment, and we do
12 not view this as a punishment in the same way we do not view
13 this as a ban.

14 It requires a divestment to a different owner, which is
15 the same remedy that exists, for example, under CFIUS. There
16 are also some other technical arguments that I know we are --

17 Mr. Soto. Consider this your oral argument practice
18 here. Why is it not an ex post facto law?

19 Mr. Newman. I think ex post facto would suggest that
20 there is a criminal aspect to this. That is a clause that
21 applies to the criminal law. Again, there is nothing
22 criminalizing about this bill, and it doesn't apply
23 retroactively to conduct that predates the enactment of the
24 bill.

25 Mr. Soto. Why wouldn't this be a taking, do you think?

1 Mr. Newman. A taking -- there are a number of different
2 categories of taking, but one of them would have -- a
3 regulatory taking typically involves complete and total
4 destruction of the value of the asset, which is not the case
5 of what this bill would accomplish.

6 There are also other arguments about especially foreign
7 buyers and foreign investors and how much they are even
8 protected at all by the Fifth Amendment takings clause in
9 this context, given that it is a foreign parent owner of the
10 asset.

11 Mr. Soto. And why isn't it a First Amendment violation?

12 Mr. Newman. So, first and foremost, it goes back to the
13 point that there is nothing being banned here. There is
14 simply a requirement to change ownership to a responsible
15 owner. So if you are not banning anything, I think that is a
16 very different proposition under the First Amendment.

17 It is also the case that the company, ByteDance, I think
18 its First Amendment interests are pretty limited. The users
19 of ByteDance and -- the users of the TikTok platform have
20 rights, but, again, those rights are not infringed by
21 something that regulates the ownership of the app on which
22 they are transacting.

23 Mr. Soto. Would this bill apply to any other companies
24 similarly situated right now?

25 Mr. Newman. This bill directly applies to TikTok and

[REDACTED]

1 ByteDance, and then it provides a process that would have to
2 be set up by the executive branch to determine if any other
3 companies meet the criteria that is targeted and specified in
4 the bill.

5 Mr. Soto. And you had testified already, while there is
6 no exact modern day example or parallel, Huawei gives us
7 actually a more extreme measure we had to take. [REDACTED]

8 [REDACTED]
9 [REDACTED]. And we are not even requiring an
10 elimination of TikTok. We are simply requiring a change of
11 ownership.

12 So would you say this is actually a less strict remedy
13 than we had to do with Huawei?

14 Mr. Newman. I think it is a more targeted remedy
15 because it could be accomplished simply by a change in
16 ownership, whereas Huawei you have to pull it out of the
17 telecom infrastructure in its entirety.

18 Mr. Soto. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 We will start with our national security folks, go to
25 Justice, and then the FBI.

1 ODNI. [REDACTED]

2 Mr. Grover. [REDACTED]

3 [REDACTED]

4 Mr. Soto. Any opinions by Justice?

5 Mr. Newman. I think we have seen some outside experts
6 point to content on the platform that they think is more
7 reflective of anti-Semitic narratives on TikTok than other
8 platforms. [REDACTED].

9 Mr. Soto. Well, we need some inside experts to look at
10 this as well to the extent that whatever data you have. I
11 realize you will be able to make an opinion about the
12 fidelity of your conclusions, but a lot of us are seeing well
13 beyond anecdotal evidence that there is already influence on
14 U.S. policy right now, even setting aside elections, based
15 upon the type of -- the number of posts for one perspective
16 versus another that we are seeing.

17 So I appreciate you all agreeing to take that back to
18 your respective offices, because this is something we need
19 you to help analyze to help us form an opinion.

20 With that, I yield back.

21 Mr. Latta. Thank you. The gentleman yields back.

22 The chair recognizes the gentleman from Alabama's Sixth
23 District for 5 minutes.

24 Mr. Palmer. Thank you, Mr. Chairman.

25 Gentlemen, I want to raise some questions about the fact

[REDACTED]

1 that the Chinese Communist Party bought golden shares in
2 ByteDance, and they were able to appoint one of the three
3 directors, a guy named Wu Shugang. This is a guy who sent
4 out a tweet that said, "I have only one wish, that one day I
5 can cut off the dog head of liberal Chinese people with
6 Western values." He added, "Let the Chinese traitors
7 preaching so-called human rights and freedom go to hell."

8 This guy was also overseeing the regulation of the
9 internet in China. I think he appointed the censor at
10 ByteDance. That is problematic in and of itself. But it
11 should also be noted that the laws under the People's
12 Republic of China permit the CCP to have access to the data
13 that ByteDance collects.

14 Their 2017 National Intelligence Law compels private
15 entities and individuals to cooperate with state intelligence
16 work. Specifically, Article 7 of the law declares that any
17 organization or citizen shall support, assist, and cooperate
18 with state intelligence work, according to the law.

19 I think this is where it starts to become problematic,
20 because -- and I see you guys nodding -- we really haven't
21 addressed what the bigger issue is here, and that is, in
22 terms of a threat to our national security, TikTok may be
23 identified separately from ByteDance, but in terms of how the
24 CCP sees them, they are one.

25 Would you agree with that?

1 Mr. Newman. I would agree that ByteDance is a wholly
2 owned -- I believe wholly owns TikTok and that ByteDance has
3 very strong ties to the Chinese Communist Party.

4 Mr. Palmer. ByteDance contains an internal corporate
5 CCP committee, through which they exercise influence over
6 that company and other companies, because they have done with
7 this other companies as well.

8 And I have forgotten your name from the FBI. You are
9 nodding and kind of grinning. So would you like to address
10 that?

11 Mr. Grover. Which aspect, again? I am sorry.

12 Mr. Palmer. Well, the fact that this idea that -- and
13 the CEO of TikTok came in and testified, and I do believe
14 that he misrepresented things. I think he lied to Congress.

15 There is no question in my mind that the CCP exerts
16 control over TikTok. Their law requires it. And then here
17 there is another statement from the Department of Justice
18 filing against TikTok in 2020 that ByteDance contains an
19 internal corporate CCP committee through which they exercise
20 influence at the company.

21 And even more problematic, there are 300 current TikTok
22 or ByteDance employees with ties to Chinese state media that
23 are both employed by ByteDance and TikTok and official
24 Chinese propaganda arms at the same time.

25 Mr. Grover. We would absolutely agree with Mr. Newman

1 in terms of the connection between the CCP and PRC Government
2 with ByteDance, and then obviously down through the chain to
3 TikTok.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 Mr. Palmer. This is precisely the reason that TikTok
13 needs to be divested, because as long as they are part of
14 ByteDance this is going to be a problem.

15 What most concerns you about what TikTok is collecting,
16 and do you or the Federal Government know what TikTok is
17 sharing with the CCP?

18 And part of this is they are getting about -- they are
19 collecting about -- an enormous amount of data. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 So I would like for you to respond to that, all three of
25 you, if you have something you want to say about it.

1 Mr. Grover. I can go first. I think for us, it would

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Mr. Palmer.

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Go ahead, Mr. Newman.

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Mr. Newman. One of the things that I learned from my IC
colleagues was that

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You saw China's responsibility for the OPM hack, for
example, some years ago.

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ODNI. I would just add two things, because I think the

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Mr. Palmer. My last point on this --

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Mr. Latta. I am sorry. The gentleman's time has

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expired.

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Mr. Palmer. Okay. Thank you, sir.

1 Mr. Latta. The chair now recognizes the gentlelady from
2 Washington's Eighth District for 5 minutes.

3 Ms. Schrier. Thank you all for your work on our
4 national security and all of your great answers today.

5 I was going to tee off a little bit of Mr. Soto's
6 comments but tie that to election a little bit.

7 Tell me if I am wrong on this. 2016, I think there was
8 plenty of evidence of Russian meddling and releasing
9 information and spreading disinformation and maybe amplifying
10 things that would divide the country and make us hate each
11 other. Can you confirm that, maybe?

12 Mr. Newman. In multiple elections of recent elections,
13 the intelligence community has put out reports that highlight
14 efforts to sow division and divisive narratives by foreign
15 adversaries, including --

16 Ms. Schrier. I wanted to just confirm that for the
17 whole room.

18 2020. I remember getting a briefing, probably on Zoom or
19 the phone. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 There was -- again, correct me if I am wrong. Okay.
24 Then we had a secret briefing, so I have no notes. I have
25 very unclear recollection. But there was a secret

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[REDACTED]

Is that confirming? Maybe you don't know. Do you recall that?

Mr. Grover. [REDACTED]

[REDACTED] That is worked out of a different shop for us.

Ms. Schrier. Okay. And then you talked about

[REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

But now, as Darren was talking about, we have got this Israel-Gaza thing, Rutgers. Do any of you off the top of your head have the numbers about the difference between anti-Israel, pro-Palestinian/Gaza on TikTok versus Instagram and other social media, like off the top of your head?

Mr. Newman. I am familiar with the general study, but not the specific numbers.

Ms. Schrier. Okay. I will look up the Rutgers study. Again, no devices here.

But it seems like right now that is certainly dividing

[REDACTED]

1 our party like crazy. It is causing all kinds of civil
2 discord. It could easily sway this election, I mean, among
3 other things. If masks potentially could have swayed the
4 last one then this could sway this one.

5 And so I guess one is just your comments about that and
6 how you are looking at that. [REDACTED]

7 [REDACTED]

8 But then the second is, given the actor that Russia is,
9 do we know if China is selling this information or giving
10 this information to Russia for their use?

11 Mr. Newman. So recognizing that I think my two
12 colleagues don't work in the foreign malign influence space,
13 here is I think what I can say for today.

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED]

25 [REDACTED]

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Ms. Schrier.

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At some point, off the record or later you can answer a question about what constitutes a safe U.S. buyer, but I have one more question.

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Let's say this happens, this goes down. We decide to mandate that it gets sold. There is divestiture. Immediate retaliation. Like, do they stop buying our agriculture products? Do they suddenly release a storm of information about people? Like, do you anticipate -- maybe they just release all the information to Russia. They could hurt us in a lot of ways right away.

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Mr. Latta. Could you answer the question briefly for

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Ms. Schrier?

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ODNI.

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Ms. Schrier. Thank you. Yield back.

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Mr. Latta. Thank you.

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The chair recognizes the gentlelady from Arizona's

15

Eighth District for 5 minutes.

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Mrs. Lesko. Thank you, Mr. Chair.

17

As you said, this legislation specifically calls out

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TikTok and ByteDance. I don't know the reason for that, if

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that was political or legal.

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And so my question is, is it helpful or hurtful legally

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to name the company instead of just broadly rejecting all

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companies that would do something egregious?

23

Mr. Newman. From a litigation perspective, naming

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companies gives another argument that they could raise in

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litigation. But just to reinforce what I said before, our

1 litigators stand ready to defend the bill in court.

2 Mrs. Lesko. So I think what you said is that legally,
3 as far as them suing, it would legally be better if we just
4 generically address the situation instead of naming a
5 particular company. Did I hear you correctly?

6 Mr. Newman. If you looked at it narrowly through the
7 lens of litigation, I think there are some additional
8 arguments we will have to contend with because the company is
9 named.

10 But just to go back to something that was asked earlier,
11 there are examples in other contexts, like Federal
12 acquisitions, where companies like Huawei, Kaspersky, and
13 others are named in legislation and they are not able to
14 prevail on bill of attainder and some of the other arguments
15 we have heard. And so I think we stand ready to respond to
16 those.

17 Mrs. Lesko. And I need some clarification on this
18 legislation. Would it just apply to TikTok and ByteDance, or
19 does it apply to any similar company from an adverse nation?

20 Mr. Newman. It applies directly to TikTok and
21 ByteDance, and it authorizes the executive branch to develop
22 a process to determine that other companies meet similar
23 characteristics with a series of criteria.

24 So it wouldn't automatically apply to any other
25 entities, it would only apply to those two, but there would

1 be an authority to designate other entities if they met the
2 criteria of the legislation.

3 Mrs. Lesko. Thank you.

4 My next question is, when did India ban TikTok and how
5 did they do it and did they publicly say it was for national
6 security reasons? Do any of you know?

7 Mr. Newman. I am not an expert on their legislation. I
8 do know that India and China have a very complicated
9 relationship across many vectors. And I know that in recent
10 years they have taken increasing actions to make TikTok
11 unavailable in India.

12 Mrs. Lesko. And can you repeat which countries would
13 qualify as a foreign adversary in this legislation?

14 Mr. Newman. So this legislation cross-cites to a
15 specific statutory provision --

16 Mrs. Lesko. Right.

17 Mr. Newman. -- that involves four countries. The
18 countries are China, Russia, Iran, and North Korea.

19 Mrs. Lesko. And I have a couple minutes left, so I am
20 going to ask you a question totally unrelated.

21 My experience in buying cameras, cameras at my home,
22 they are all made in China. Most of them are all made in
23 China. My husband had witnessed that they called back to
24 China. And so even NDAA-approved cameras inside our house,
25 outside our house were made in China. He has set up an inner

1 loop so that it does not call back to China.

2 Have any of you investigated this at all? Do you know
3 anything about what I am talking about?

4 Mr. Grover. [REDACTED]

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13 Mrs. Lesko. And who would I talk to? Who would I call?
14 Who would my office call to find out more about this? Would
15 it be the FBI? Who do I call?

16 Mr. Grover. I would certainly encourage you to call the
17 FBI directly if it is a concern for your personal situation
18 as well.

19 Mrs. Lesko. Well, my husband likes gadgets and things
20 like that, and he has said like all the cameras are made -- I
21 don't know if all of them -- but a majority of the cameras
22 are made in China and that they did call back. They called
23 back to China.

24 And so that would be a huge national security risk if
25 they are collecting data inside our homes. But thank you.

1 Mr. Latta. Thank you. The gentlelady yields back.

2 Mrs. Lesko. I yield.

3 Mr. Latta. Thank you very much.

4 And the chair recognizes the gentlelady from
5 Massachusetts' Third District for 5 minutes.

6 Mrs. Trahan. Thank you, Mr. Chair.

7 And thank you to the panel. This has been super
8 informative, illuminating all of the above.

9 I am actually going to focus on the second bill, not the
10 main event, the Protecting Americans' Data from Foreign
11 Adversaries Act.

12 Is there anything in that bill that would protect
13 against a middleman that could buy the data and transfer it
14 to a foreign adversary?

15 Mr. Newman. I probably would have to look at the bill
16 more closely, but I know the definition of data broker is a
17 fairly broad definition. And my sense would be that if the
18 middleman was inside the United States or subject to the
19 jurisdiction of the Federal Trade Commission under that bill,
20 then they would likely be violating the same provision,
21 because the definition of data broker is one who transacts in
22 data that you, as the actor, did not collect from the --
23 directly from the person who had it. And so that would be a
24 definition that would encompass some of the middle actors
25 that you are talking about.

[REDACTED]

1 Mrs. Trahan. Correct. But there could be a company
2 that is started the day after this bill that is not a foreign
3 adversary, not one of the four you just named, that could be
4 in the business, because this is a direct transfer between a
5 data broker and a foreign adversary.

6 And I just ask that question because I am sure you have
7 examples of how the data coming out of brokers is used to
8 target our intelligence officers, our servicemen and -women.

9 [REDACTED]
10 [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED]

13 Mr. Newman. So for our intelligence community, I am
14 probably not the best witness. But for the question you
15 raised, the executive order that was enacted, that was signed
16 into law and the rulemaking process contemplates a
17 prohibition on directly or indirectly making transfers of
18 such data to foreign adversaries and anticipates that when
19 you are selling data to other middle actors you would get
20 representations and assurances from them that they would
21 commit not to onward transfer the data.

22 Mrs. Trahan. That is a tough one to enforce. I mean,
23 this is a cut-and-paste. So if you are -- we are having
24 issues sort of patrolling that today, those transfers, how do
25 we think we are going to do that if there is a -- there is

[REDACTED]

1 just a -- I think it is a gaping loophole in the bill as
2 written.

3 Mr. Newman. I think -- I can speak more to the
4 executive order, which I worked on for some time, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] [REDACTED]

8 [REDACTED]

9 From DOJ's perspective -- and we have enforcement under
10 the executive order -- even if you can get one hop away and
11 enforce against that actor, that is a useful thing.

12 So if you have a company that is set up, let's say, in
13 UAE that is a proxy company that buys the data and then sells
14 it onward, if they are making false representations and they
15 are selling the data --

16 Mrs. Trahan. Our data brokers have a credentialing
17 process for that?

18 Mr. Newman. Well, the sale by data brokers of sales is
19 prohibited if it goes directly to foreign adversaries. And
20 if they are selling to anybody else, they would have to get
21 essentially reps and commitments that they are not selling it
22 onward. And if those commitments were false, then there
23 would be potential avenues of investigation that could follow
24 those false statements in furtherance of a violation.

25 Mrs. Trahan. If an individual could opt out of the

1 collection of data to be used by data brokers, don't you
2 think you would have an internal policy where our IC and our
3 law enforcement and our servicemen and -women would do that
4 tomorrow?

5 ODNI. That is a great question. I am not the best
6 person to answer. I mean, it is a really good question,
7 though.

8 Mrs. Trahan. Well, because then the data is never
9 collected and it is never stored, so it is not at risk for
10 being transferred to anybody.

11 And I imagine the policy of our U.S. servicemen and
12 -women could not be targeted because we would have a policy
13 to just opt out of all that data collection for data brokers.
14 never mind what regular consumers would do.

15 Mr. Newman. To your point, I think there is a lot of
16 overlap between the value of data privacy laws and the
17 national security harms that we are worried about with
18 respect to specific populations, such as servicemembers and
19 IC personnel. And I think if you had laws like that, they
20 would also have that benefit.

21 Mrs. Trahan. Look, I think we all on this committee, we
22 are on the record as wanting a comprehensive privacy law.
23 But absent that, we know that this type of data could be used
24 for blackmail and worse.

25 And so if we are going to sort of mark up and eventually

1 vote on a bill today. I want it to be foolproof so that it is
2 not stored or at risk of being transferred.

3 Would you agree that that is a better option?

4 Mr. Latta. Could you answer the gentlelady very
5 quickly? Her time has expired.

6 Mr. Newman. We would be happy to work with you at any
7 technical assistance that you think would make sense to
8 further address your concerns.

9 Mrs. Trahan. Thank you.

10 Mr. Latta. Thank you. The gentlelady yields back.

11 The chair now recognizes the gentleman from Texas'
12 Second District for 5 minutes.

13 Mr. Crenshaw. Thank you, Mr. Chairman.

14 Thank you all for being here.

15 I think by intuition we understand what the threats are
16 from China and what their potential intentions are. And
17 those intentions have to do with their doctrine of
18 unrestricted warfare, which includes nonmilitary warfare,
19 psychological warfare, media warfare, cultural warfare. This
20 is part of their extended domain view, which adds different
21 domains to conflicts.

22 And so I think we rightfully look at TikTok as quite the
23 tool should they choose to use it and something that we are
24 envious of even. [REDACTED]

25 [REDACTED]

[REDACTED]

1 My question is, do we have any -- and I think I know the
2 answer, because you have said it a few times, but I just want
3 to make sure.

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 ODNI. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 Mr. Grover. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Mr. Crenshaw. Yeah. [REDACTED]
20 [REDACTED]

21 ODNI. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Mr. Crenshaw. Okay. Yeah. I mean, a lot of my
25 questions have already been answered. And I had another

1 really specific one that I have forgotten, so I think I will
2 yield back. Thank you.

3 Mr. Griffith. Would the gentleman yield? Would the
4 gentleman yield to me instead of yielding back?

5 Mr. Crenshaw. Okay. I will yield my time.

6 Mr. Griffith. He said, okay, fine, Mr. Chairman.

7 Mrs. Lesko asked the question -- if I could ask Mr.
8 Newman. Over here. Mrs. Lesko asked a question about naming
9 ByteDance and TikTok and then the second tier.

10 My assumption has been -- correct me if I am wrong --
11 that one of the aspects of the second tier, if you didn't
12 name the companies and you just had that second tier to set
13 up the criteria, is that to set the criteria up you would
14 have to follow the APA, the Administrative Process Act, and
15 that that could take a lot of time. And if you didn't do
16 that correctly, that would be an additional line of
17 litigation that TikTok and ByteDance could bring.

18 So this, while it has negatives, it also has the
19 positives, that you get right into litigation, you argue it
20 out while the Administrative Process Act and the other
21 criteria or the other process is being developed by the
22 executive branch. Am I correct in that assessment?

23 Mr. Newman. I am not sure that the entire APA process
24 would dictate how you would have to make the factual
25 determination.

1 But I think your general point is correct, that by
2 Congress having these hearings and then making the findings
3 directly, it obviously happens faster and more definitively
4 than if the executive branch conducted its own review and
5 then made findings.

6 Mr. Griffith. I now yield back to the gentleman from
7 Texas.

8 Mr. Crenshaw. Thank you. I reclaim my time. I
9 remember the question now.

10 So does this legislation actually ban the app or does it
11 just ban future downloads of the app and updates?

12 Mr. Newman. It effectively -- if there is no
13 divestment, it would prohibit actors such as the Apple App
14 Store and Google Play and others who would support the
15 distribution and operation of the app.

16 Mr. Crenshaw. Right. So it would disappear from app
17 stores for future users, but current users would still have
18 TikTok. And it does nothing to actually stop the data flow
19 from the app, which is a technical possibility that we could
20 do but that is not what we are doing here.

21 Mr. Newman. It doesn't do it directly. I think other
22 actors who would be supporting the data flows would have to
23 look carefully at the bill to decide if they were on the
24 right side of the line.

25 Mr. Crenshaw. Like telecom companies?

1 Mr. Newman. Right. And there is an exception for some
2 of those actors, but it depends on how the -- the technical
3 way that the app works, I think, who would be subject to it.
4 But, at a minimum, I think the App Store, Google Play, some
5 of the others who they need to be able to reach a U.S.
6 audience would no longer be able to distribute it.

7 Mr. Crenshaw. Right. Well, what do you think AT&T
8 would do if this was passed into law? Have they been
9 consulted? I mean, we have had a lot of conversations about
10 this.

11 Mr. Newman. It is a good question. I think different
12 actors may have different risk tolerance for the bill. But
13 fundamentally, I think the reason everyone is getting calls
14 today from those who TikTok is activating is because I think
15 they are very concerned that if the bill became law it would
16 be very difficult for them to continue to operate their
17 products with a U.S. audience.

18 Mr. Crenshaw. Okay. I hope it is, but I am not sure it
19 would be. Okay.

20 Thank you. I yield back.

21 The Chair. [Presiding.] The gentleman yields back.

22 The chair recognizes Mr. Veasey for 5 minutes.

23 Mr. Veasey. Thank you, Madam Chair.

24 I just have one question for you. I know that a lot of
25 what I have heard -- and I have been in and out, so let me

1 just say that, you may have already touched on this -- but a
2 lot of what I have heard is, as this data is being collected,
3 that it could pose a very serious future threat.

4 For people that are concerned about now -- and of
5 course, you sat through the same, similar type briefings that
6 all of us in here have that talk about how the Chinese think
7 about things long term. They think about things 5, 10, 15,
8 20 years from now. But in America we always think about
9 today. We always think about how something affects us now.

10 And as Members of Congress, we have to go and sell what
11 we are doing to the American public. So what type of threat
12 are you comfortable telling the American public now how this
13 affects them, and particularly the TikTok users that are very
14 loyal to this particular platform?

15 Mr. Newman. So first, I would highlight that no one is
16 suggesting that this legislation would end the platform. It
17 would simply transfer it to responsible ownership.

18 In terms of the risks right now, I think right now the
19 data that people are generating on the app, both public but
20 also private data, is potentially at risk of going to the
21 Chinese Government, being used now or in the future by the
22 Chinese Government in ways that could be deeply harmful to
23 tens of millions of young people who might want to pursue
24 careers in government, who might want to pursue careers in
25 the human rights field, and who one day could end up at odds

1 with the Chinese Government's agenda. So I think that is a
2 concern right now, because they are generating the
3 information right now.

4 It is also the case that the narratives that are being
5 consumed on the platform, there is a risk right now that
6 those narratives are being affected by the algorithm and that
7 the Chinese Government potentially has the right to censor
8 information that the Chinese Government decides it does not
9 want the American public to know.

10 And when you look at the statistics of the number of
11 young people who, for example, get their news and information
12 from TikTok now versus just 3 years ago, it is striking to
13 what degree those narratives are resonating with young people
14 in America.

15 So, fundamentally, I think the message would be, this is
16 not a ban. This is something that simply transfers it to
17 responsible ownership. And there are risks right now of
18 having additional data collected and stored by the Chinese
19 Government for uses in the future.

20 Mr. Veasey. Yeah. One of the things that you did say
21 earlier in your testimony is that if they say no to an
22 American company being able to run TikTok USA that they could
23 just say, "We just won't have the platform in America then if
24 that is our only alternative," which would, in these people's
25 eyes, that would be a ban to them.

[REDACTED]

1 Mr. Newman. It is something that is a scenario to
2 discuss.

3 I think, first, I think that ByteDance the company would
4 be very motivated to find a way to sell the platform. It is
5 worth potentially as much as \$100 billion dollars right now,
6 and there are executives and shareholders who would want to
7 see it sold for value.

8 Second, there would be -- in a world in which the
9 Chinese Government acted, I think we have seen in the past
10 that they have been reluctant to dramatically escalate in
11 this space.

12 There have been a number of U.S. legislative actions
13 taken, for example, with respect to Huawei, which was once
14 one of the most successful Chinese companies, to try to limit
15 its presence in the U.S. market and with U.S. consumers.

16 And although China has responded, they have responded in
17 a measured way, because at the end of the day China has a lot
18 of agendas in the world and they, frankly, have many onerous
19 restrictions on our companies inside China.

20 And so it is not clear to me that a restriction on a
21 Chinese company inside the United States would trigger that
22 type of dramatically escalatory reaction.

23 ODNI. [REDACTED]
24 [REDACTED]
25 [REDACTED]

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Mr. Veasey. Thank you.

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Thank you, Madame Chair. I yield back.

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The Chair. The gentleman yields back.

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The chair recognizes Mr. Joyce for 5 minutes.

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Mr. Joyce. Thank you, Madam Chair.

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And thank you for being here today. I think this has
been incredibly informative.

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I would like some nomenclature if we can, please.

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Would you currently define TikTok as malware?

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Mr. Newman. I don't know if I would go quite that far.

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Mr. Joyce. If I am on TikTok and I activate that it has
access to my photos or has access to my contact list, is
TikTok malware?

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Mr. Newman. I think lots of apps that operate in a
commercial way collect a lot of information. So the
definition of what is malware is probably a little bit in the
eye of the beholder.

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Mr. Joyce.

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Mr. Newman. I think what I would be comfortable saying

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is that this stops a potential threat that is resident on the

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phones of 170 million Americans or however many active users

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there are in any given month, and that is a very significant

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clear and present danger to the United States.

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[REDACTED], it is a threat of

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harvesting of data, and it is a threat of pushing or

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censoring narratives in deference to the Chinese Government.

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Mr. Joyce. And I would say, thus, [REDACTED]

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So we all recognize that the harvesting of data by

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ByteDance has on America's sensitive individual data and the

22

use of TikTok.

23

Do you find that any of that potentially could be

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reversible, or has this done irreparable damage that we are

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not going to be able to pull back?

1 Mr. Newman. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 ODNI. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 Mr. Joyce. So the divestiture that this legislation
10 would do -- and we had the CEO in front of us and many of us
11 feel in a very untruthful dialogue back and forth.

12 So he talked about walling off of American data during
13 his testimony here. Do you think that with divestiture and
14 allowing ByteDance to be removed and having TikTok owned by a
15 nonadversary, do you think that that walling off can occur?

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[REDACTED]

1 [1:19 p.m.]

2 Mr. Newman. I think if a trusted company bought the
3 platform, they would also want to buy some of the data that
4 exists, that allows the platform to operate, both to train
5 the algorithm and to ensure user experience continues. So my
6 expectation would be that those assets would be part of the
7 sale that would occur in that event.

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Mr. Joyce. That is my question.

12 Mr. Newman. -- which is a good question -- I think we

13 [REDACTED] --

14 Mr. Joyce. [REDACTED]

15 Mr. Newman. -- [REDACTED]

16 [REDACTED]

17 Mr. Joyce. That would be done.

18 And then just, finally, how important is it particularly
19 when it comes to medical data? Individuals are on TikTok.
20 They have access to that data. Many individuals keep all
21 their medical data, including their medical records, on
22 there.

23 We passed both pieces of legislation. What threats are
24 currently posed in the space of medical data regarding
25 foreign adversaries being able to hold that data, moving

1 forward as well?

2 ODNI. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Mr. Joyce. Right.

6 ODNI. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Mr. Joyce. Do you find anyone would be as interested in
17 that data, whether it would be Russia, North Korea, or Iran,
18 specifically regarding medical data?

19 ODNI. [REDACTED] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 Mr. Joyce. I thank you.

2 Madam Chair, my time has expired. I yield.

3 The Chair. The gentleman yields back.

4 The chair recognizes Mrs. Fletcher? Is that right?

5 Mrs. Fletcher. Yes. Thank you.

6 The Chair. Are you next?

7 Mrs. Fletcher. I think so.

8 The Chair. Okay.

9 Mrs. Fletcher. Mr. Veasey came back.

10 The Chair. Very good. Great.

11 Mrs. Fletcher. Thank you. I have gotten used to it,
12 being at the end and batting cleanup. A lot of people show
13 back up.

14 And I just want to thank you all. This has been a
15 really, really, really helpful session I think for all of us.
16 A lot of the questions I had coming in have been answered.
17 But I kind of want to follow up on three things just to get
18 my own sense of clarity on a couple.

19 One, there has been a lot of discussion about the
20 specific naming of TikTok -- this question is for you,
21 Mr. Newman -- the specific naming of TikTok in the bill and
22 whether that is more helpful or less helpful. And it seems
23 like there are legal arguments that can be raised and
24 challenged if it is in there.

25 But to what extent -- I mean, I guess I want to know

1 what you think is better. There is one setting up the
2 process by which then the administration would have to say
3 TikTok falls under this process, which could potentially with
4 all the questions about Chevron and other stuff this year,
5 how much can the agencies and rulemaking are interpreting
6 sort of.

7 Do you just need the express intent of Congress that we
8 are trying to deal with TikTok here? Is that more useful to
9 you despite the potential legal arguments that might be made
10 about the bill?

11 Mr. Newman. I think it is very useful to us, the work
12 that Congress has done. From a litigation perspective, there
13 are some benefits to giving the executive branch the ability
14 to act, in addition to Congress. But I also understand that
15 there are some policy reasons and other considerations why
16 Congress wants to act quickly in this space given the
17 national security concerns.

18 Mrs. Fletcher. And so this could eliminate setting up a
19 process, following the process, and a year from now saying,
20 okay, TikTok falls under the process that we have just set up
21 if we do it now.

22 Okay. That was one question. These are going to go in
23 not really sequential order. I have another question for
24 Jonathan from ODNI, and possibly you may know something about
25 it as well.

[REDACTED]

1 But I have heard from some colleagues on the select
2 committee that is dealing with this that their own concerns
3 about -- that they have heard concerns not only about the

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 ODNI. [REDACTED] -

9 Mrs. Fletcher. Okay.

10 ODNI. -- [REDACTED]

11 Mrs. Fletcher. Okay.

12 ODNI. [REDACTED] [REDACTED]
13 [REDACTED]
14 Mr. Grover. [REDACTED]
15 [REDACTED]
16 [REDACTED].

17 Mrs. Fletcher. Okay. Well, I will say that some
18 members of the select committee have relayed that they heard
19 that concern [REDACTED] So I
20 don't think it surprises anybody. [REDACTED]
21 [REDACTED]

22 And then my last real question, so we can keep moving
23 before votes, is I think that everybody in here has
24 anticipated and kind of touched on the challenges, the phone
25 calls we are all getting. I did check. We are getting them

1 too. Everybody is getting them. And there is a
2 sophistication to that as well. So I think there are a lot
3 of concerns about what we can and cannot say outside this
4 room. Obviously, this is a classified setting.

5 But can I take it that the unclassified information that
6 we got from the DOJ today about the extent of the threat and
7 national security is something that we can share in framing?

8 And I think it would be helpful for the committee to
9 frame the national security significance and these particular
10 issues because of what we are seeing mobilizing today and
11 into the future.

12 And I think one of my questions is going to be, how do
13 we frame this kind of going forward? Because I think we can
14 anticipate, and I am interested in -- again, sorry,
15 Mr. Newman, you have been like on the hot seat all day. --
16 but kind of what you anticipate is the path forward. I mean,
17 do we anticipate that even if this is passed here, passed in
18 the Senate, signed into law, there are going to be lawsuits
19 challenging the divestiture?

20 Like, what do you see as a reasonable path forward and
21 sort of a realistic timeframe where we have to explain and
22 kind of why this is so urgent? And coupled with, as a
23 lawyer, I know the sort of slowness of the legal process in
24 getting it resolved, how do we balance those?

25 Mr. Newman. So, first, with respect to the fact sheet,

1 that is unclassified. Absolutely it can be shared. It is
2 not subject to the concerns around classified information.

3 In terms of how this would play out, first of all, I
4 think if this bill passes the House, if it becomes law, it
5 does radically change the negotiating posture between the
6 United States Government and the company. And I do think the
7 company will be very motivated to want to come to the table
8 with a solution that preserves the value of their asset.

9 So I think one is there could be some kind of negotiated
10 resolution. I do anticipate that they will also likely try
11 to file litigation. That is what I think their lawyers are
12 poised to do, and that is what they have suggested.

13 Again, we, our civil division, our litigators would
14 handle that litigation. And we as a department believe that
15 we have much stronger arguments after this bill becomes law
16 than we have today when we already have litigation with the
17 company that is being held in abeyance in the D.C. Circuit.

18 In terms of the timeframe of how it would play out, it
19 is a little bit difficult to say. But I do think there is a
20 real urgency to these issues, and I think the company at a
21 certain point would have the same urgency to try to find some
22 kind of solution for themselves in the negotiations if they
23 aren't able to succeed in litigation.

24 Mrs. Fletcher. Okay. Thank you. I have gone over my
25 time.

1 So, Madam Chair, I yield back. Thank you very much.

2 And thanks to all of you.

3 The Chair. The gentlelady yields back.

4 The chair recognizes Mr. Weber for 5 minutes.

5 Mr. Weber. Thank you, ma'am.

6 We have heard about at least one person in this country
7 that owns a 15 percent share of TikTok and, therefore,
8 reluctant to see this go forward. Do we have a way of
9 knowing how many Americans or we -- can we see that trade?
10 Do we happen to know how many Americans have shares of
11 TikTok? Do we know that? Are we able to get that
12 information?

13 ODNI. I was just going to say, from the intelligence
14 community, [REDACTED]

15 [REDACTED]
16 [REDACTED] But I don't know from the other side.

17 Mr. Weber. So I assume they are not listed on the
18 New York Stock Exchange, huh? Do we know that?

19 Mr. Newman. We don't have the visibility --

20 Mr. Weber. Your mike is not on.

21 Mr. Newman. Forgive me.

22 We don't have, I don't have the visibility into the
23 ownership structure to know all of the U.S.-based owners.

24 Mr. Weber. Would that be beneficial to know?

25 Mr. Newman. I would certainly be interested to know

[REDACTED]

1 more about who owns it. But my assumption is that, as a
2 practical matter, the strongest ownership interest is in
3 China and among individuals who are subject to the
4 jurisdiction of the Chinese Government.

5 Mr. Weber. Okay. And this is a little bit afield, pun
6 intended, but the Chinese have been buying land.

7 Anything related to TikTok connection?

8 Mr. Grover. [REDACTED]
9 [REDACTED]

10 Thank you.

11 Mr. Weber. Okay. So speaking of TikTok, which I want
12 all my grandkids and even my great-granddaughter to stay away
13 from, do we have staffers in the IC or other places. FBI,
14 whatever, do we have staffers [REDACTED]
15 [REDACTED]

16 ODNI. [REDACTED] [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 Mr. Weber. [REDACTED]

25 ODNI. [REDACTED]

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[REDACTED]

Mr. Weber. [REDACTED]

[REDACTED]

ODNI. [REDACTED]

[REDACTED]

Mr. Newman. In the context of the negotiations over the future of the company, they have certainly made some presentations about how the algorithm works. [REDACTED]

[REDACTED]

[REDACTED]

Mr. Weber. Okay. And this is probably more of a personal question for all of us perhaps. Are you all able to monitor any flags that would have a Member of Congress' name associated with an event, either nefarious or otherwise, off TikTok?

Mr. Grover. [REDACTED]

[REDACTED]

Mr. Weber. [REDACTED]

[REDACTED]

[REDACTED]

Mr. Grover. [REDACTED]

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Mr. Weber.

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is what I think I hear you saying?

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Mr. Grover.

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Mr. Weber. Okay.

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Mr. Grover.

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Mr. Weber. Okay. Fair enough. Let me continue.

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Is our intel community,

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ODNI.

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Mr. Weber. Forgive the interruption, shortness. [REDACTED]

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ODNI. [REDACTED] [REDACTED]

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Mr. Grover. [REDACTED]

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Mr. Weber. Okay. And one last question real quick.

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Mr. Newman. [REDACTED]

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1 Mr. Weber. Thank you.

2 I yield back.

3 The Chair. The gentleman yields back.

4 Just so everyone knows, votes have been called. We are
5 going to go until 1:50. Then we will break for votes.

6 You will get a break. You have been on the hot seat.

7 The chair recognizes Ms. Barragan for 5 minutes.

8 Ms. Barragan. Thank you.

9 My first question is about the timeline that the bill
10 provides. Considering the difficulty of identifying a U.S.
11 company that can purchase TikTok, can you explain why the
12 bill provides 6 months for ByteDance to divest TikTok rather
13 than a longer timeline, like maybe a year?

14 Mr. Newman. I can't speak to the choices that the
15 drafters made in the bill, except to say, in other contexts
16 in CFIUS, when we have done divestments, we have often been
17 able to accomplish those divestments in 6 months.

18 I agree with you that this is a very significant
19 acquisition that would have to be made by another buyer.

20 Ms. Barragan. Okay. So I have been reading that the --
21 that you all worked with the drafters of the bill, is that
22 accurate, for technical assistance?

23 Mr. Newman. We provided technical assistance I think
24 largely with an eye toward litigation-related risks and
25 legal.

1 Ms. Barragan. Okay. Was the timeline -- do you know if
2 the timeline was discussed at that time, the 6 months or
3 longer?

4 Mr. Newman. In versions that I saw, the timeline was
5 open for a period of -- for a number of drafts. It was not
6 actually spelled out in the document. So I am not sure that
7 we provided specific assistance on that, but I can have our
8 leg team let you know.

9 Ms. Barragan. Okay. The next question is, the bill
10 defines foreign adversary-controlled application as a
11 application that is operated by, one, a company controlled by
12 a foreign adversary and then, two, that is determined by the
13 President to present a significant threat to the United
14 States.

15 Do we need to have both of those for this to go into
16 effect? Do you need to have a foreign adversary and does the
17 President have to determine that there is a significant
18 threat?

19 Mr. Newman. That is my understanding of how the bill
20 operates, is that in order to identify and designate
21 additional applications that would be subject to this bill,
22 there would need to be both a finding of national security
23 harm and a finding that it meets the criteria of being a
24 covered application within the meaning of the statute.

25 Ms. Barragan. So hypothetically speaking, let's say

[REDACTED]

1 TikTok was Russian owned and it is a foreign adversary, but
2 we had a President in the White House that didn't really
3 think Russia was a threat and, therefore, determined that
4 TikTok was not a significant threat, this would not kick in,
5 right, because you would have to have the President determine
6 it is a significant threat? Is that accurate?

7 Mr. Newman. It is accurate that for entities other than
8 TikTok and ByteDance, there would need to be a determination
9 by the executive branch.

10 Often when the President is referenced in statutes, what
11 will happen is there will be some kind of executive order and
12 rulemaking process that will give different executive branch
13 agencies the ability to make those determinations.

14 Ms. Barragan. Okay. Jonathan, earlier -- I don't know
15 if you can remember the context. Very early on in the
16 hearing you made a comment. You looked down and you -- looks
17 like you were reading something. [REDACTED]

18 [REDACTED].
19 Do you remember what that reference was to so I can get
20 clarification? [REDACTED]

21 [REDACTED]
22 ODNI. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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[REDACTED]

Ms. Barragan. Okay. So you have no memory of the -- I just wrote "[REDACTED]," and I thought it was in the context of talking about the threat or specific examples. It was very early on in like the first few questions of the hearing. If you find it, if you will just come back to me, that would be helpful.

ODNI. Yep.

Ms. Barragan. I meant that to understand that you just

[REDACTED]

[REDACTED]

[REDACTED]

But did I misunderstand that?

ODNI. [REDACTED]

[REDACTED]

Ms. Barragan. Okay. My last question is, FBI, DOJ, you guys are currently, I have been hearing, that you are

[REDACTED] Is that

1 right?

2 Mr. Newman. We certainly are expending a lot of
3 energies in looking at the threat of the Chinese Government.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Ms. Barragan. Okay. So what the --

8 Mr. Newman. -- on that basis.

9 Ms. Barragan. Okay. Thank you.

10 The question, because I am running out of time here, if
11 there is a cut to your budget, DOJ and FBI, is that going to
12 impact your ability to do your job on TikTok and these
13 foreign adversaries?

14 Mr. Newman. If there is a cut to the national security
15 division's budget, it would affect broadly our ability to do
16 lots of things involving the Government of China and its
17 technology, correct.

18 Ms. Barragan. Great. Thank you.

19 I yield back.

20 The Chair. The gentlelady yields back.

21 The chair recognizes Mr. Balderson for 5 minutes.

22 Mr. Balderson. Thank you, Madam Chair.

23 Jonathan, do you want to answer the question? So I will
24 give you that time.

25 ODNI. Thank you. Yeah, we found the point you are

1 referencing.

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7 Mr. Balderson. Madam Chair, I apologize. I did not go
8 through the chair.

9 Thank you all.

10 And since my great colleague from Massachusetts brought
11 up my data broker's piece and the middleman, I am going to
12 shift and go complete opposite here, get away from ByteDance.

13 But, Brent, I guess it is going to be you predominantly
14 here from the FBI. And so let's stick on the China stuff.
15 Let's stick on the data collection they do.

16 A solar panel company that is 49 percent owned by China
17 and 51 percent owned by the U.S. just opened up in the
18 congressional district that I represent. I am concerned
19 about that, and the community is very concerned about that.
20 It has really brought an uproar here recently.

21 Mr. Walberg also has a Ford Motor battery plant that is
22 going in his district, and I don't want to speak for him
23 because he is not here, but that is also a partnership with
24 China.

25 I mean, I am concerned the solar manufacturing facility

[REDACTED]

1 could be learning sensitive information about our grid. I
2 understand this is a hearing focusing on the ByteDance.
3 Where do we draw the line here in this country as far as
4 having a 49 percent China-owned solar manufacturing company
5 and a 51 percent owned U.S. company here?

6 Mr. Grover. [REDACTED]
7 [REDACTED] [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
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[REDACTED]

Mr. Balderson. Any ideas or thoughts I should tell the constituents where this facility is located? I mean, just tell them that, I guess?

But, I mean, and the hard part also was it really wasn't talked about amongst the deal. You know, there -- yeah, China partnership, maybe, but not 49 percent partnership.

So okay. Thank you.

Now go ahead, Jonathan.

ODNI. Sorry. I was going to say, if I may, [REDACTED]

[REDACTED]

Mr. Balderson. Yeah, that is on my list. I am going to go down that path.

ODNI. [REDACTED]

[REDACTED]

[REDACTED]

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Mr. Balderson. Would that access be -- would that information be allowed to come to us also as Members of Congress?

ODNI. I can talk with --

Mr. Balderson. Okay.

ODNI. -- OLA about that.

Mr. Balderson. Thank you very much.

Madam Chair, I yield back.

Does anybody want my extra time?

Madam Chair, I yield back.

The Chair. The gentleman yields back.

You don't have any questions.

The chair recognizes Mr. Fulcher for 5 minutes.

Mr. Fulcher. Thank you, Ms. Chairman, and the panel.

This question goes to anybody on the panel that might want to address it, and it is on a related note. But let's take a hypothetical situation. You got a third-party data broker in a friendly country, not the U.S. but a friendly country. And that third-party data broker is actually a front for an adversarial government.

Is there, from your vantage point, anything in this -- these pieces of legislation that might add to the toolbox to

1 address that, or is that something we need to take up in a
2 totally different set of language?

3 Mr. Newman. So as I read this bill, if it were outside
4 the United States and it was an entity that was not within
5 the definition of data broker, then it wouldn't be covered by
6 the bill.

7 When we -- when we put in place the executive order, we
8 have language about directly or indirectly providing that
9 data to an adversary country, and we have other ways to try
10 to deal with those kind of intermediary issues.

11 Mr. Fulcher. Okay. So but this probably wouldn't cover
12 it, or you think it probably would?

13 Mr. Newman. My understanding of the bill is that it
14 appears to be principally focused on direct transfers between
15 those who meet the definition of data brokers and adversary
16 countries.

17 Mr. Fulcher. Okay.

18 Mr. Newman. So you would need to have both of those
19 present.

20 Mr. Fulcher. Okay. Got it. Thanks.

21 So on a related note, previous hearing in this committee
22 we talked about -- [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

[REDACTED]

1 Same question. In that context, does this add anything
2 in the toolbox for those circumstances?

3 Mr. Newman. So, certainly, those threats go beyond what
4 this bill is focused on. I do think that the threat of what

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 Mr. Fulcher. I realize this is a little bit off of that
12 subject, but I just -- I wanted to for the record just try to
13 get an understanding.

14 Moving on. It is my understanding that China has a
15 cybersecurity law of 2017 they put in place. It allows,
16 among many things, the Chinese Government to conduct remote
17 inspection of computer networks.

18 Is this your understanding? Is this your understanding
19 to be true?

20 ODNI. Yes. So we see -- what we see is [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 Mr. Fulcher. Okay. So I am going to go back to the

[REDACTED]

1 previous question. Given that context, anything in this
2 legislation that might add to the toolbox for that?

3 I am just trying to find the guidelines of where we got
4 to go next, because --

5 Mr. Newman. I don't think this directly --

6 Mr. Fulcher. Okay.

7 Mr. Newman. -- addresses --

8 Mr. Fulcher. All right.

9 Mr. Newman. -- those issues.

10 Mr. Fulcher. Very good.

11 Madam Chair, I know we are on a time crunch. I have got
12 more, but I am going to go on the record elsewhere.

13 I yield back.

14 The Chair. The gentleman yields back.

15 The chair recognizes Mr. August Pfluger for 5 minutes.

16 Mr. Pfluger. Thank you, Madam Chair.

17 And thank you all for testifying in front of my
18 subcommittee on Homeland Security. That was extremely
19 helpful.

20 I want to get right to the point on the heating and
21 cooling issue. And so probably primarily for the two of you,
22 ODNI and DOJ, let's talk about -- but anybody please
23 answer -- let's talk about the heating and cooling. Have you
24 seen specific instances of industry, of people, of military,
25 geopolitical events, ongoing legal cases that TikTok has

[REDACTED]

1 weighed in and has used heating or cooling to change the
2 outcome, to influence the outcome like they are doing today
3 against lawmakers? Have you seen other instances of that?

4 ODNI. [REDACTED]

5 [REDACTED]

6 Mr. Newman. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 Mr. Pfluger. Does Christopher Wray still maintain that
21 the platform can be used as a manipulative arm of the CCP?

22 Mr. Grover. Yes. And I think we have established here
23 just some of those vectors and how that would kind of take
24 place. [REDACTED]

25 [REDACTED]

[REDACTED]

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2 Mr. Pfluger. I appreciate the great testimony today,
3 and I yield back.

4 The Chair. The gentleman yields back.

5 The chair recognizes Mrs. Harshbarger for 5 minutes.

6 Mrs. Harshbarger. Thank you, Madam Chair.

7 Thank you guys for being here today.

8 I guess our bill does not apply to e-commerce companies.
9 And my question is, TikTok allows e-commerce on their app.
10 Could ByteDance simply sell the social media part of the app
11 and maintain the e-commerce component?

12 Mr. Newman. I think ByteDance could try any number of
13 things to attempt to evade the bill, and I would have to look
14 more at the findings that are made. I think as long as it
15 was still ByteDance, the entity, and TikTok, the entity, I
16 think they would have a problem, given the way the bill is
17 structured. But they might try any number of ways --

18 Mrs. Harshbarger. Yeah.

19 Mr. Newman. -- to try to evade the bill. And that is
20 why it was important there be follow-on authority that the
21 executive branch could use to designate other companies.

22 Mrs. Harshbarger. I guess something you said earlier.
23 How do we determine that there has been a bona fide
24 divestment of TikTok, and how do we determine, I guess, a
25 bona fide buyer? Because the bill requires that, in

[REDACTED]

1 coordination with all executive branch agencies, including
2 the National Security Agency and the Committee on Foreign
3 Investment in the United States, the President will determine
4 if TikTok is divested completely.

5 You mentioned that you would have to sit up a list of
6 criteria. Do we not have that, I guess, criteria already?

7 Mr. Newman. So as a practical matter, what I think
8 would happen is that when the President is given those kinds
9 of authorities in the bill, they would need to set up,
10 usually using an executive order or some kind of rulemaking,
11 a process for determining that the criteria of the bill had
12 been met. And the best probably template for doing so would
13 be the process we have for determining that a divestment has
14 occurred that meets the requirements of CFIUS.

15 Mrs. Harshbarger. So we would have to do that after the
16 bill is passed?

17 Mr. Newman. Well, the executive branch would have to do
18 that, I guess --

19 Mrs. Harshbarger. The executive branch.

20 Mr. Newman. -- would have to set it up to make that
21 determination --

22 Mrs. Harshbarger. Okay.

23 Mr. Newman. -- as we do in the CFIUS context.

24 Mrs. Harshbarger. We have four foreign adversary
25 entities listed in our legislation. And my question is, how

1 or would you inform the committee if other foreign entities
2 who should be added to the list would be added, and would we
3 have to alter the bill in its current state?

4 Mr. Newman. So there is a process set out in the bill
5 for adding entities. It requires, among other things, a
6 public notice of the Presidential determination that sets out
7 the concern, as well as a public report to Congress that must
8 be submitted 30 days prior to the determination.

9 And so there is both a public piece, as well as a public
10 report to Congress, all of which have to be submitted prior
11 to the time at which the action would take effect.

12 Mrs. Harshbarger. You mentioned you had seven adversary
13 nations. Who are the other three?

14 Mr. Newman. So the exec -- the legislation has four --

15 Mrs. Harshbarger. Uh-huh.

16 Mr. Newman. -- using a statutory definition. The
17 executive order has seven, which also includes Cuba,
18 Venezuela, and -- it may be six. I think I said seven, but
19 it is at least six that were in the executive order, and
20 there may be a seventh that --

21 Mrs. Harshbarger. Okay.

22 Mr. Newman. -- escape me at the moment.

23 Mrs. Harshbarger. All right. And my last question is
24 this: Do you have any evidence of election interference in
25 this current cycle as of today?

[REDACTED]

1 ODNI. On that one, I would have to, again, pivot back
2 to the Foreign Malign Influence Center and the elections
3 coordinator because I am certain they are tracking that and
4 they can probably provide a better briefing than I could.

5 Mrs. Harshbarger. Maybe we need a briefing on that.

6 Okay. With that, Mr. Chairman, I -- or, Ms. Chairman, I
7 yield back.

8 The Chair. The gentlelady yields back.

9 The chair recognizes Mrs. Miller-Meeks for 5 minutes.

10 Mrs. Miller-Meeks. I thank you, Madam Chair.

11 I thank our witnesses for being here today.

12 My questions are very brief because I think a lot of
13 questions have been asked. And this is in follow up to
14 Mrs. Harshbarger's question that is there are a lot of
15 e-commerce sites which are actually Chinese owned or Chinese.
16 So whether it is e-commerce, whether it is reading sites,
17 literature sites, and couldn't these sites be used to do the
18 same kind of thing as far as gathering information? And
19 then, do we continue to follow those or monitor those?

20 Mr. Grover. I can take this one. Thank you. Thank you
21 for the question.

22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

[REDACTED]

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[REDACTED]

Mrs. Miller-Meeks. And then very quick question. Given what has happened to Chinese tech owners and CEOs of companies, Jack Ma, Ben -- Bao Fan, should Congress -- should we pass this ban here and then pass it through Congress and it is signed into law -- this is a really weird question -- but do we need to put Mr. Chow in protective custody?

Mr. Grover. [REDACTED]

Mrs. Miller-Meeks. I yield back.

The Chair. The gentlelady yields back.

The chair recognizes Mrs. Cammack for 5 minutes.

Mrs. Cammack. All right. We are going for it.

You all had said that there is a -- speaking [REDACTED]

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Now, of course, in the last 24 hours, we have seen how they can absolutely, utilizing geolocation data of their users, pinpoint what congressional district and then freeze the app unless you take an active -- an action through the app itself. So, I mean, that in itself should be pretty concerning for everyone.

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And I have gone through the device data accessible on TikTok, and it is interesting because the connection interfaces don't explicitly say -- and I went through their terms of service -- that they can, in fact, use the geolocation data.

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Is there something from the DOJ side that is going to be able to point to that as a violation of terms of service that we can look into? Would that complicate what we are trying to do here or would that benefit what we are trying to do here?

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Mr. Newman. So it is a good question.

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If there were some degree of deception in their terms of service --

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Mrs. Cammack. If?

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Mr. Newman. -- or in the collection of their

[REDACTED]

1 information, which there may well be, the immediate remedy
2 would probably actually be a remedy by the Federal Trade
3 Commission, which typically handles those types of instances
4 of violations of privacy policies and violations of terms of
5 service.

6 Mrs. Cammack. Uh-huh.

7 Mr. Newman. Conceivably, if it rose to the level of an
8 offense, for example, a violation of the Computer Fraud and
9 Abuse Act, 18 U.S.C. 1030, then there might be a basis for a
10 criminal investigation, but it would depend. I wouldn't want
11 to speculate in a hearing about, you know, that particular
12 fact pattern without more information.

13 Mrs. Cammack. So and to that point, though, so there
14 was [REDACTED] the marketing
15 pixels that are embedded, so kind of like cookies and how you
16 track, right? [REDACTED]

17 [REDACTED]
18 [REDACTED] Can you speak to that?

19 Because I think that that would be something this
20 committee would be very interested in. It is one thing if
21 you have signed up and agreed to the terms of service of an
22 app. [REDACTED]

23 [REDACTED] I think that members would be very
24 curious to know that.

25 Mr. Grover. So I am not an expert on the laws

1 surrounding the use of ad pixels and that technology.

2 Mrs. Cammack. Right.

3 Mr. Grover. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Mrs. Cammack. Of course.

7 Mr. Grover. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Mrs. Cammack. Okay. From -- well, and I was looking at
13 some of the timelines. And there was one thing that I found
14 pretty interesting, and I wonder if there was a direct
15 correlation with the IC community and your visibility into
16 the company and some of the things happening around it.

17 So the founder of TikTok, the parent company ByteDance,
18 in 2017, he had been basically publicly admonished by the
19 CCP. And they came after him. He had to issue a public
20 apology and said -- in 2018 -- and said, "I apologize for
21 deviating from" -- and this is a quote -- "socialist core
22 values, and I pledge to ensure that the CCP's voices are
23 empathetically broadcasted."

24 Goes on to talk about all the different ways that they
25 are going to use ByteDance, and gave very specific examples.

[REDACTED]

1 Then you fast-forward to 2020, and they make a real shift in
2 implementing this. And I feel like we went dark.

3 [REDACTED]
4 ODNI. [REDACTED] [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 Mrs. Cammack. Right.

11 ODNI. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 Mrs. Cammack. Well, and just as more of a confirmation
20 of my research, [REDACTED]

21 [REDACTED] [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 This seems to be the first case that I have been able to

1 find where the CCP actually appointed someone from the CCP to
2 the board.

3 ODNI. [REDACTED].

4 Mrs. Cammack. Thank you.

5 ODNI. [REDACTED]

6 Mrs. Cammack. Thank you.

7 With that, I yield.

8 The Chair. The gentlelady yields back.

9 The chair recognizes Mr. Obernolte for 5 minutes.

10 Mr. Obernolte. Thank you very much. Thanks for your
11 patience.

12 Jonathan, we will start with you. I love the fact that
13 we are using first names. I think this should be the
14 practice going forward. Change all of our name tags. It
15 would be much better.

16 This is an issue I am really struggling with. You know,
17 on the one hand, I don't think anyone on this dais relishes
18 the prospect of telling 170 million Americans that the
19 government is going to make the decision for them what social
20 media app they use. The civil libertarian in me shudders at
21 the prospect. On the other hand, I am absolutely convinced,
22 as you are, that the situation with TikTok and ByteDance
23 represents a latent national security threat.

24 So, for me, the crux of the issue is, how likely is
25 TikTok to exploit that national security threat? And this is

1 what I wanted to ask you about, because we have talked about
2 the situation with [REDACTED]. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 And by the way, [REDACTED]

7 [REDACTED] [REDACTED] [REDACTED]

8 [REDACTED]

9 We talked a little bit [REDACTED] And my first
10 question. [REDACTED]

11 [REDACTED]

12 [REDACTED] Did TikTok actually do that?

13 Mr. Grover. [REDACTED]

14 [REDACTED]

15 [REDACTED] [REDACTED]

16 Jonathan, do you have any --

17 ODNI. I am just looking here. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 Mr. Obernolte. Okay. [REDACTED]

24 [REDACTED]

25 ODNI. Yeah.

[REDACTED]

[REDACTED]

1 Mr. Obernolte. All right. Also, you testified earlier
2 that with the situation in [REDACTED] [REDACTED], [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] [REDACTED]

7 Okay. So this comes down to something that wasn't said
8 today but was said in one of the other classified briefings,
9 that we think that there is a -- [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] Did I get that right?

13 ODNI. [REDACTED]

14 [REDACTED]

15 Mr. Obernolte. So, I mean, this is the problem that I
16 have. [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] Did I misunderstand?

19 Mr. Newman. As one who was there at the previous
20 briefing, I think what was said is [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

[REDACTED]

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Mr. Obernolte. Sure.

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Mr. Newman.

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ODNI. And I would just say

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Mr. Obernolte. Okay. Last question. Mr. Newman, we have been discussing this issue of divestiture. And in answering every question, you have made the assumption that there would actually be a divestiture.

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And let me challenge that a little bit, because if the premise here is that the CCP would intervene and force ByteDance to do something against their commercial interests in, for example, influencing content in a way that benefits the CCP, I mean, that is not good for ByteDance. It is good for the CCP.

What makes you think the CCP would allow ByteDance to

[REDACTED]

1 divest? Because if your goal is to disrupt domestic affairs
2 in this country, it would be much better for them to take
3 TikTok offline, right? We would have protests, 170 million
4 young people upset at government taking away their rights.
5 You know, why isn't that -- why isn't that something the CCP
6 would do?

7 Mr. Newman. I think the CCP would face some very hard
8 choices if this bill became law because both answers are bad
9 for them.

10 I think if the app is sold, it takes away something that
11 is a latent threat that they can exploit in the future. I
12 think if the app is not sold and it is no longer able to
13 operate in the United States, then that could become a model
14 for even more countries to join the United States and India
15 and others in taking action against what is one of the most
16 successful products that the Chinese Government is selling in
17 the sort of virtual ecosystem. So they would face hard
18 choices.

19 When Huawei, for example, was the subject of a very
20 longstanding U.S.-led campaign to remove it from the telecom
21 infrastructure in the United States and elsewhere, the
22 Chinese Government responded but in a reasonably measured and
23 calibrated way, because they have other irons on the fire and
24 they didn't want to use all of their capital on trying to
25 resuscitate Huawei or signal how strongly they were

[REDACTED]

1 interested in seeing Huawei survive in the United States.

2 Mr. Obernolte. Okay. Well, I am out of time. I would
3 look more into if that I were you, because if it is only a
4 matter of money, I think the CCP might say, you know what,
5 this disruption that we have caused is worth the loss of the
6 money that we would gain in divestiture.

7 Anyway, I yield back, Madam Chair.

8 The Chair. Thank you.

9 Mr. Newman. Thank you.

10 The Chair. The gentleman yields back.

11 I ask unanimous consent to insert in the record the
12 documents included on the staff hearing documents list.

13 Without objection, so ordered.

14 [The information follows:]

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16 ***** COMMITTEE INSERT *****

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[REDACTED]

1 The Chair. I remind the members that they have 10
2 business days to submit questions for the record, and I ask
3 the witnesses to respond to the questions promptly.

4 Members should submit their questions by close of
5 business on March 21st, 2024. However, I remind members and
6 witnesses that today's hearing was a classified executive
7 session. Because we transmit our questions for the record by
8 email, members should not disclose sensitive information in
9 their questions. And I recommend that you not ask the
10 witnesses for information that may be sensitive. Likewise, I
11 ask the witnesses not to provide sensitive information in
12 their responses to any questions for the record.

13 Without objection, the committee is adjourned.

14 [Whereupon, at 2:05 p.m., the committee was adjourned.]

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[REDACTED]